

11-12-2015

## American Semiconductor v. Sage Silicon Clerk's Record Dckt. 43011

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IN THE SUPREME COURT OF THE STATE OF IDAHO

AMERICAN SEMICONDUCTOR INC.,  
an Idaho Corporation,

Plaintiff-Counterdefendant-Appellant,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY; WILLIAM TIFFANY, individuals,

Defendants-Counterclaimants-Respondents,

and

ZILOG, INC., a Delaware Corporation; and  
DOES I-X,

Defendants-Respondents.

Supreme Court Case No. 43011

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE THOMAS F. NEVILLE

JOHN N. ZARIAN  
ATTORNEY FOR APPELLANT  
BOISE, IDAHO

GARY L. COOPER  
ATTORNEY FOR RESPONDENT  
POCATELLO, IDAHO

CHAD E. BERNARDS  
ATTORNEY FOR RESPONDENT  
BOISE, IDAHO

STEPHEN R. THOMAS  
ATTORNEY FOR RESPONDENT  
BOISE, IDAHO



Date	Code	User		Judge
12/2/2011	NCOC	CCVIDASL	New Case Filed - Other Claims	Thomas F. Neville
	COMP	CCVIDASL	Complaint Filed	Thomas F. Neville
	SMFI	CCVIDASL	(7) Summons Filed	Thomas F. Neville
12/8/2011	AMCO	MCBIEHKJ	Amended Complaint Filed and Demand for Jury Trial	Thomas F. Neville
12/23/2011	AFOS	CCHOLMEE	(2) Affidavit Of Service 12.17.11	Thomas F. Neville
	AFOS	CCHOLMEE	(2) Affidavit Of Service 12.18.11	Thomas F. Neville
1/6/2012	NOAP	CCSWEECE	Notice Of Appearance (Metcalf for Sage Silicon Solutions LLC, David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany & Evelyn Perryman)	Thomas F. Neville
2/1/2012	ANSW	CCVIDASL	Defendants Verified Answer to Amended Complaint and Demand for Jury Trial and Defendants Affirmative Defenses and Counterclaims	Thomas F. Neville
	NOTS	CCVIDASL	Notice Of Service of Defendants Verified Answer to Amended Complaint and Demand for Jury Trial and Defendants Affirmative Defenses and Counterclaims	Thomas F. Neville
2/28/2012	ANSW	CCHEATJL	Answer To Counterclaims (Brian Julian For American Semiconductor Inc)	Thomas F. Neville
3/19/2012	NOTS	CCVIDASL	Notice Of Service	Thomas F. Neville
3/26/2012	MOTN	TCORTEJN	Motion to Compel	Thomas F. Neville
	AFFD	TCORTEJN	Affidavit of Stephen Adams in Support of Motion to Compel	Thomas F. Neville
	NOTH	TCORTEJN	Notice Of Hearing Re Motion to Compel	Thomas F. Neville
3/27/2012	AMEN	CCWRIGRM	Amended Notice of Hearing	Thomas F. Neville
	HRSC	CCWRIGRM	Hearing Scheduled (Hearing Scheduled 04/20/2012 10:00 AM) Motion to Compel	Thomas F. Neville
4/2/2012	NOTC	CCSWEECE	Notice of Association of Counsel (Gary Cooper for Sage Silicon Solutions LLC, David Roberts, Gyle Yearsley, & Willaim Tiffany)	Thomas F. Neville
4/10/2012	CONT	DCELLISJ	Continued (Hearing Scheduled 05/25/2012 02:00 PM) Motion to Compel	Thomas F. Neville
4/18/2012	STIP	CCDEREDL	Stipulation to Extend Service Deadline	Thomas F. Neville
	NOHG	CCDEREDL	Second Amended Notice Of Hearing (5-25-12 @ 2PM)	Thomas F. Neville
4/25/2012	NOTS	CCMASTLW	Notice Of Service	Thomas F. Neville
4/26/2012	ORDR	DCELLISJ	Order To Extemd Service Deadline	Thomas F. Neville
5/1/2012	NOTS	TCORTEJN	Notice Of Service of Defendants Counterclaimants Second Set of Discovery to Plaintiff	Thomas F. Neville
5/16/2012	AFFD	CCRANDJD	Affidavit of Steve Darrough	Thomas F. Neville
5/17/2012	AFFD	TCORTEJN	Affidavit of David Roberts	Thomas F. Neville

Date	Code	User		Judge
5/22/2012	RPLY	CCKHAMSA	Reply In Support Of Motion To Compel	Thomas F. Neville
5/29/2012	NOTS	CCVIDASL	Notice Of Service	Thomas F. Neville
	DCHH	DCELLISJ	Hearing result for Hearing Scheduled scheduled on 05/25/2012 02:00 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Motion to Compel LESS THAN 100 pages	Thomas F. Neville
6/6/2012	NOTS	CCKHAMSA	Notice Of Service	Thomas F. Neville
6/12/2012	ORDR	DCELLISJ	Order RE MOTION TO COMPEL	Thomas F. Neville
6/27/2012	MOTN	CCDEREDL	Defendants Motion for Protective Order	Thomas F. Neville
	OBJE	CCBOYIDR	Objection to Motion for Protective Order and Submission of Proposed Protective Order	Thomas F. Neville
	NOHG	CCBOYIDR	Notice Of Hearing	Thomas F. Neville
	HRSC	CCBOYIDR	Hearing Scheduled (Hearing Scheduled 07/20/2012 10:00 AM) Objection to Defendants' Proposed Protective Order	Thomas F. Neville
7/11/2012	SUBC	CCBOYIDR	Notice of Substitution Of Counsel (Zarian for American Semiconductor, Inc)	Thomas F. Neville
7/16/2012	STIP	CCNELSRF	Stipulation to Postpone Hearing On Proposed Protective Order and Extend Deadline for Service of Process on Defendant Zilog Inc.	Thomas F. Neville
7/18/2012	ORDR	DCELLISJ	Order To Postpone Hearing on Proposed Prot Order and Extend Deadline For Service of Process on Defendant Zilog	Thomas F. Neville
7/20/2012	HRVC	DCELLISJ	Hearing result for Hearing Scheduled scheduled on 07/20/2012 10:00 AM: Hearing Vacated Objection to Defendants' Proposed Protective Order	Thomas F. Neville
8/31/2012	OBJT	CCSWEECE	Supplemental Objection to Defendants Motion for Protective Order	Thomas F. Neville
	MEMO	MCBIEHKJ	Memorandum in Support of Motion for Protective Order	Thomas F. Neville
9/4/2012	MEMO	CCAMESLC	Memorandum in Support of Motion for Protective ORder	Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Hearing Scheduled 10/05/2012 01:30 PM) objection to protective order	Thomas F. Neville
9/6/2012	NOTC	CCMEYEAR	Notice of Continuance of Heaing (10/05/2012 @ 1:30 pm)	Thomas F. Neville
9/21/2012	STIP	CCRANDJD	Stipulation to Extend Deadline for Service of Process on Zilog (Stip Only)	Thomas F. Neville
9/24/2012	ORDR	DCELLISJ	Order granting stipulation to extend deadline for service of process on Defendant Zilog	Thomas F. Neville

Date	Code	User	Judge
9/28/2012	OBJE	MCBIEHKJ	Second Supplemental Objection to Motin for Protective Order Thomas F. Neville
10/5/2012	DCHH	DCELLISJ	Hearing result for Hearing Scheduled scheduled on 10/05/2012 01:30 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: objection to protective order LESS THAN 100 pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Status by Phone 11/09/2012 03:00 PM) Thomas F. Neville
11/9/2012	DCHH	DCELLISJ	Hearing result for Status by Phone scheduled on 11/09/2012 03:00 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 100 pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Status 12/07/2012 03:00 PM) Thomas F. Neville
11/26/2012	STOR	DCELLISJ	Stipulation And Order To Extend Deadline For Service of Process on Defendant Zilog Thomas F. Neville
12/7/2012	DCHH	DCELLISJ	Hearing result for Status scheduled on 12/07/2012 03:00 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 100 pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Hearing Scheduled 01/04/2013 01:30 PM) Thomas F. Neville
12/28/2012	CONT	DCELLISJ	Continued (Hearing Scheduled 01/11/2013 04:00 PM) Thomas F. Neville
1/11/2013	DCHH	DCELLISJ	Hearing result for Hearing Scheduled scheduled on 01/11/2013 04:00 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 100 pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Status 03/22/2013 03:30 PM) Thomas F. Neville
1/29/2013	ORDR	DCELLISJ	Protective Order Thomas F. Neville
2/11/2013	MOTN	CCPINKCN	Motion to Enforce the Court's January 11, 2013 Order Thomas F. Neville
	MISC	CCPINKCN	Declaration of John N Zarian in Support of Plaintiff's Motion to Enforce the Court's January 11, 2013 Order Thomas F. Neville
	MEMO	CCPINKCN	Memorandum in Support of Plaintiff's Motion to Enforce the Court's January 11, 2013 Order Thomas F. Neville
2/19/2013	NOTS	CCVIDASL	(2) Notice Of Service Thomas F. Neville

Date	Code	User	Judge
3/5/2013	STOR	DCELLISJ	Second Amended Stipulation And Order To Extend Deadline for Service of Process on Defendant Zilog, Inc.
3/25/2013	DCHH	DCELLISJ	Hearing result for Status scheduled on 03/22/2013 03:30 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 100 pages
	HRSC	DCELLISJ	Hearing Scheduled (Status 05/03/2013 10:30 AM)
	NOSV	CCBOYIDR	Notice Of Service
4/22/2013	NOTS	CCVIDASL	Notice Of Service
5/3/2013	DCHH	DCELLISJ	Hearing result for Status scheduled on 05/03/2013 10:30 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 100 pages
	HRSC	DCELLISJ	Hearing Scheduled (Status 06/07/2013 09:00 AM)
5/29/2013	CONT	DCELLISJ	Continued (Status 06/07/2013 09:30 AM)
5/30/2013	SMFI	CCPINKCN	Summons Filed
5/31/2013	MOTN	CCHEATJL	Plaintiff American Semiconductor Inc's Motion To Compel
	MEMO	CCHEATJL	Memorandum In Support Of Plaintiff American Semiconductor Inc's Motion To Compel
	DECL	CCHEATJL	Declaration Of John N Zarian In Support Of Plaintiff American Semiconductor Inc's Motion To Compel
6/7/2013	DCHH	DCELLISJ	Hearing result for Status scheduled on 06/07/2013 09:30 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Less than 100 pages
	HRSC	DCELLISJ	Hearing Scheduled (Motion to Compel 09/06/2013 03:00 PM)
6/17/2013	NOHG	CCVIDASL	Notice Of Hearing on Plaintiffs Motion to Compel
	HRSC	CCVIDASL	Hearing Scheduled (Motion to Compel 09/09/2013 03:00 PM)
6/27/2013	STIP	CCMEYEAR	Stipulation to File Second Amended Complaint
7/2/2013	ORDR	DCELLISJ	Order Granting Stipulation to File Second Amended Complaint
	AMCO	CCOSBODK	Second Amended Complaint Filed
	CDIS	CCOSBODK	Civil Disposition entered for: Lloyd, Russell, Defendant; Perryman, Evelyn, Defendant. Filing date: 7/2/2013

Date	Code	User	Judge
7/2/2013	STAT	CCOSBODK	STATUS CHANGED: Closed pending clerk action
7/11/2013	NOHG	CCSCOTDL	Amended Notice of Hearing on Plaintiffs Motion to Compel (9-6-13 @ 3PM)
7/12/2013	NOTS	CCNELSRF	Notice Of Service
8/5/2013	NOAP	CCSWEECE	Notice Of Appearance (Stephen R Thomas for Zilog Inc)
8/7/2013	ANSW	TCLAFFSD	Zilog, Inc.'s Answer To Plaintiff's Second Amended Complaint
8/30/2013	MOTN	CCMEYEAR	Plaintiff American Semiconductor Inc's Motion to Compel Against Defenatn Zilog, Inc
	MEMO	CCMEYEAR	Memorandum in Support of Plaintiff American Semiconductor, Inc Motion to Compel Against Defendant Zilog Inc
	DECL	CCMEYEAR	Declaration of John N SZarian in Support of Plaintiff American Semiconductor Inc's Motion to Compel Against Defendant Zilog Inc
	NOTH	CCMEYEAR	Notice Of Hearing (10/18/2013 @ 11:00 am)
	HRSC	CCMEYEAR	Hearing Scheduled (Motion to Compel 10/18/2013 11:00 AM)
	NOTS	CCSCOTDL	Notice Of Service
	RESP	CCSCOTDL	Defendants Sage Roberts Yearsley and Tiffany Response to Motion to Enforce and Motion to Compel
	AFFD	CCSCOTDL	Affidavit of Gary L Cooper
9/3/2013	REPL	TCLAFFSD	Plaintiff American Semiconductor, Inc.'s Reply In Further Support Of Motion To Compel Against Sage Defendants
9/6/2013	DCHH	DCELLISJ	Hearing result for Motion to Compel scheduled on 09/06/2013 03:00 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 100 pages
9/24/2013	NOTS	CCMEYEAR	Notice Of Service of Zilog Inc's First Set of Discovery Requests to Plaintiff
9/26/2013	NOTS	CCOSBODK	Notice Of Service
10/8/2013	NOTS	MCBIEHKJ	Notice Of Service
10/10/2013	NOSV	CCHOLMEE	Notice Of Service
10/11/2013	NOTS	CCHEATJL	Notice Of Service
	MOTN	TCLAFFSD	Defendant Zilog, Inc.'s Motion To Vacate And Reset October 18, 2013, Heraing On Plaintiff's Motion To Compel
	AFFD	TCLAFFSD	Affidavit Of Gerald T. Husch

Date	Code	User	Judge
10/11/2013	MEMO	TCLAFFSD	Defendant Zilog, Inc.'s Memorandum In Opposition To Plaintiff American Semiconductor, Inc.'s Motion To Compel
10/15/2013	MOTN	CCHOLMEE	American Semiconductor Incs Opposition to Motion to Vacate and Reset Hearing on Motion to Compel
	RPLY	CCVIDASL	Plaintiff American Semiconductor Incs Reply in Further Support of Its Motion to Compel
10/16/2013	DEOP	DCELLISJ	Memorandum Decision and Order Granting Defendant Zilogs Motion to Vacate and Reset Hearing on Pl's Motion to Compel
	CONT	DCELLISJ	Continued (Motion to Compel 11/15/2013 03:30 PM)
10/25/2013	NOTS	CCKHAMSA	Notice Of Service
10/29/2013	AMEN	CCVIDASL	Amended Notice of Hearing on Plaintiff American Semiconductor Incs Motion to Compel Against Defendant Zilog Inc
11/13/2013	CONT	DCELLISJ	Continued (Motion to Compel 01/10/2014 01:30 PM)
12/19/2013	NOTS	CCNELSRF	Notice Of Service
12/27/2013	MOTN	CCVIDASL	Plaintiffs American Semiconductor Incs Motion to Compel Depositions of Defendants Sage Silicon Solutions LLC and Zilog Inc
	DECL	CCVIDASL	Declaration of Kennedy K Luvai in Support of Filed American Semiconductor Incs Motion to Compel Depositions of Defendants Sage Silicon Solutions LLC and Zilog Inc
	MEMO	CCVIDASL	Memorandum in Support of Plaintiff American Semiconductor Incs Motion to Compel Depositions of Defendants Sage Silicon Solutions LLC and Zilog Inc
	NOHG	CCVIDASL	Notice Of Hearing of Plaintiff American Semiconductor Incs Motion to Compel Depositions of Sage and Zilog (1.10.14 @ 1:30 PM)
	MOTN	CCVIDASL	Plaintiff American Semiconductor Incs Renewed Motion to Compel Against Defendant Zilog Inc
	DECL	CCVIDASL	Declaration Filed of Kennedy K Luvai in Support of Plaintiff American Semiconductor Incs Renewed Motion to Compel Against Defendant Zilog Inc
	MEMO	CCVIDASL	Memorandum in Support of Plaintiff American Semiconductor Incs Renewed Motion to Compel Against Defendant Zilog Inc
	AMEN	CCVIDASL	Amended Notice of Hearing of Plaintiff American Semiconductor Incs Renewed Motion to Compel (1.10.14 @ 1:30 PM)

Date	Code	User		Judge
12/31/2013	AMEN	TCRUDZES	Amended Certificate of Service	Thomas F. Neville
1/2/2014	CONT	DCELLISJ	Continued (Motion to Compel 01/10/2014 03:00 PM) and Renewed Motion to Compel	Thomas F. Neville
	AMEN	CCMARTJD	Second Amended Notice of Hearing on Renewed Motion to Compel and Motion to Compel Depositions (1.10.14@3pm)	Thomas F. Neville
1/3/2014	AFFD	TCRUDZES	Affidavit of Gary L. Cooper in Opposition to Plaintiff's Motion to Compel Rule 30(b)(6) Depositions of Defendant Sage Silicon Solution, LLC	Thomas F. Neville
	DECL	CCHEATJL	Declaration Of Gerald T Husch In Opposition To Plaintiff American Semiconductor, Inc's Motion To Compel Rule 30(b)(6) Depositions Of Defendants Sage Silicon Solutions LLC And Zilog Inc.	Thomas F. Neville
	DECL	CCHEATJL	Declaration Of Ramon Lopez In Opposition To American Semiconductor, Inc's Renewed Motion To Compel Against Zilog Inc	Thomas F. Neville
	DECL	CCHEATJL	Declaration Of Dan Eaton In Opposition To American Semiconductor, Inc's Renewed Motion To Compel Against Zilog Inc	Thomas F. Neville
	MEMO	CCHEATJL	Defendant Zilog's Memorandum In Opposition To Plaintiff American Semiconductor Inc's Renewed Motion To Compel Against Defendant Zilog, Inc	Thomas F. Neville
	MEMO	CCHEATJL	Defendant Zilog's Memorandum In Opposition To Plaintiff American Semiconductor Inc's Motion To Compel Rule 30(b)(6) Depositions Of Sage Silicon Solutions LLC And Zilog Inc	Thomas F. Neville
1/7/2014	MISC	CCHOLMEE	Reply in Further Support of Motion to Compel Against Defendnat Zilog Inc	Thomas F. Neville
1/8/2014	REPL	CCOSBODK	Reply In Further Support Of Plaintiff American Semiconductor Incs Motion To Compel Depositions Of Defendants Sage Silicon Solutions LLC and Zilog Inc	Thomas F. Neville
1/10/2014	DCHH	DCELLISJ	Hearing result for Motion to Compel scheduled on 01/10/2014 03:00 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: and Renewed Motion to Compel LESS THAN 150 pages	Thomas F. Neville
1/14/2014	NOTS	CCVIDASL	Notice Of Service of Zilog Incs Amended Privilege Log	Thomas F. Neville
	NOTS	CCVIDASL	Notice Of Service of Defendant Zilog Incs Second Supplemental Responses to Plaintiffs First Set of Requests for Production	Thomas F. Neville
	NOTS	TCLAFFSD	Notice Of Service Of Discovery Response	Thomas F. Neville
	NOTS	TCLAFFSD	Notice Of Service Of Discovery Requests	Thomas F. Neville

Date	Code	User		Judge
1/22/2014	NOTC	CCNELSRF	Notice of Change of Address	Thomas F. Neville
1/23/2014	ORDR	DCELLISJ	Order RE: Plaintiff's Discovery Motions	Thomas F. Neville
1/24/2014	NOSV	CCHOLMEE	Notice Of Service (2)	Thomas F. Neville
1/31/2014	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 8 Re Voluntarily Dismissed Claims	Thomas F. Neville
2/3/2014	AMEN	CCOSBODK	Second Amended Notice Of Deposition Of Defendant Sage Siicon Solutions	Thomas F. Neville
2/6/2014	NOTC	CCBARRSA	Notice of Designation of Witnesses Re: Second Amended Notice of Rule 30 (b)(6) Deposition of Defendant Zilog, INC.	Thomas F. Neville
2/7/2014	NOSV	CCHOLMEE	Notice Of Service	Thomas F. Neville
2/10/2014	NOTC	CCHOLMEE	Notice of Designation of Witnesses Re: Second Amended Notice of Rule 30 (b)(6) Deposition of Defendant Zilog Inc	Thomas F. Neville
2/12/2014	NOTS	TCLAFFSD	Notice Of Service Of Defendant Zilog, Inc.'s Fourth Supplemental Responses To Plaintiff's First Set of Requests For Production	Thomas F. Neville
2/13/2014	NOTS	TCLAFFSD	Notice Of Service Of Defendant Zilog, Inc.'s Responses To Plaintiff's Second Set of Requests For Production	Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Status 03/06/2014 03:30 PM)	Thomas F. Neville
2/21/2014	AMEN	CCTHIEKJ	Third Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog Inc	Thomas F. Neville
	NOTC	CCTHIEKJ	Notice of Deposition of Sean D Beck	Thomas F. Neville
	NOTC	CCTHIEKJ	Notice of Deposition of Sonia U Daley	Thomas F. Neville
	NOTC	CCTHIEKJ	Notice of Deposition of Alan Shaw	Thomas F. Neville
2/27/2014	NOTS	TCLAFFSD	Notice Of Service Of Subpoena To Cadence Design Systems Inc	Thomas F. Neville
2/28/2014	NOTS	TCLAFFSD	Notice Of Service Of Plaintiff American Semiconductor Inc.'s Third Supplemental Production of Documents	Thomas F. Neville
3/3/2014	NOSV	CCHOLMEE	Notice Of Service	Thomas F. Neville
	NOTS	CCHEATJL	Notice Of Service	Thomas F. Neville
	NOTS	CCREIDMA	Notice Of Service of Defendant Zilog, Inc's Fifth Supplemental Responses to Plaintiff's First Set of Requests for Production	Thomas F. Neville
3/4/2014	NOTS	CCMARTJD	Notice Of Service	Thomas F. Neville
	AMEN	CCMARTJD	(3) Amended Notice of Deposition	Thomas F. Neville
3/6/2014	DCHH	DCELLISJ	Hearing result for Status scheduled on 03/06/2014 03:30 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 100 pages	Thomas F. Neville



Date	Code	User	Judge
3/6/2014	HRSC	DCELLISJ	Hearing Scheduled (Pretrial Conference 11/14/2014 01:30 PM)
	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 12/02/2014 09:00 AM) trial dates 12/02/14 - 12/05/14 and 12/09/14 - 12/12/14 & 12/15 & 12/16/14 10 day trial. Mediate no later than 60 days prior to trial. 9:00 to 5:30 p.m. days
3/7/2014		DCELLISJ	Notice of Jury Trial Setting
3/11/2014	NOTS	CCSWEECE	Notice Of Service of Plaintiff American Semiconductor Inc's Fifth Supplemental Production of Documents
	NOTS	CCSWEECE	Notice Of Service of Plaintiff American Semiconductor Inc's Sixth Supplemental Production of Documents
3/19/2014	NOTS	CCTHIEKJ	Notice Of Service of Zilog Inc's Second Set of Discovery Requests to Plaintiff
	AMEN	TCLAFFSD	Fourth Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc.
3/20/2014	NOTC	CCREIDMA	Notice of Deposition of Russell Lloyd
	NOTC	CCREIDMA	Notice of Deposition of Gyle Yearsley
	NOTC	CCREIDMA	Notice of Deposition of William Tiffany
	NOTC	CCREIDMA	Notice of Deposition of David Roberts
	NOTC	CCREIDMA	Notice of Deposition of Evelyn Perryman
	NOTS	CCREIDMA	Notice Of Service of Plaintiff's Third Set of Requests For Production to Defendant Zilog, Inc
3/21/2014	NOTS	CCREIDMA	Notice Of Service of Plaintiff's Second Set of Requests for Production to Defendant Sage Silicon Solutions LLC
	NOTS	CCREIDMA	Notice Of Service of subpoena Duces Tecum to Sonia Daley
	NOTS	CCREIDMA	Notice Of Service of Plaintiff's Second Set of Interrogatories to Defendant Sage Silicon Solutions LLC
	NOTS	CCREIDMA	Notice Of Service of Subpoena Duces Tecum to Alan Shaw
	NOTS	CCREIDMA	Notice Of Service of Subpoena Duces Tecum to Sean D. Beck
	NOTS	CCREIDMA	Notice Of Service of Subpoena Duces Tecum to Synopsys Inc
	NOTS	CCTHIEKJ	Notice Of Service of Defendant Zilog Inc's Seventh Supplemental Responses to Plaintiff's First Set of Requests for Production
	NOTS	CCTHIEKJ	Notice Of Service of Defendant Zilog Inc's Eighth Supplemental Responses to Plaintiff's First Set of Requests for

Date	Code	User		Judge
3/25/2014	NOTC	CCJACKKS	Amended Notice of Deposition of Russell Lloyd	Thomas F. Neville
	NOTC	CCJACKKS	Amended Notice of Deposition of Evelyn Perryman	Thomas F. Neville
3/27/2014	NOTS	CCVIDASL	Notice Of Service of Zilog Incs Third Set of Discovery Requests to Plaintiff	Thomas F. Neville
	NOTS	CCVIDASL	Notice Of Service of Zilog Incs Fourth Set of Discovery Requests to Plaintiff	Thomas F. Neville
4/1/2014	MOTN	CCWEEKKG	Zilog Inc;s Motion for Protective Order	Thomas F. Neville
	NOHG	CCWEEKKG	Notice Of Hearing	Thomas F. Neville
	HRSC	CCWEEKKG	Hearing Scheduled (Motion 05/02/2014 11:00 AM) For Protective Order	Thomas F. Neville
4/3/2014	NOTD	CCHEATJL	Notice Of Taking Deposition Sage Silicon Solutions LLC	Thomas F. Neville
	NOTD	CCHEATJL	Notice Of Taking Deposition Zilog Inc	Thomas F. Neville
	NOTD	CCHEATJL	Amended Notice Of Taking Deposition Sage Silicon Solutions LLC	Thomas F. Neville
	NOTD	CCHEATJL	Amended Notice Of Taking Deposition Zilog Inc	Thomas F. Neville
	NOTD	CCHEATJL	Second Amend Notice Of Taking Deposition Sage Silicon Solutions LLC	Thomas F. Neville
	NOTD	CCHEATJL	Second Amended Notice Of Taking Deposition Zilog Inc	Thomas F. Neville
4/4/2014	NOTS	CCMCLAPM	Notice Of Service of Response to Subpoena Duces Tecum to Alan Shaw	Thomas F. Neville
	NOTS	CCMCLAPM	Notice Of Service of Response to Subpoena Duces Tecum to Sonia Daley	Thomas F. Neville
		CCMCLAPM	Notice Of Service of Response to Subpoena Duces Tecum to Sean D. Beck	Thomas F. Neville
	NOTS	CCMCLAPM	Notice Of Service of (Supplemetal) Response to Subpoena Duces Tecum to Sean D. Buck	Thomas F. Neville
4/7/2014	AMEN	CCSWEECE	Second Amended Notice of Deposition of Russell Lloyd	Thomas F. Neville
	NOTD	CCHEATJL	Third Amended Notice Of Taking Deposition Of Rusell Lloyd	Thomas F. Neville
4/8/2014	NOTD	CCNELSRF	Second Amended Notice Of Taking Deposition of Evelyn Perryman	Thomas F. Neville
4/9/2014	NOTS	TCLAFFSD	Notice Of Service	Thomas F. Neville
4/18/2014	NOTS	TCLAFFSD	(4) Notice Of Service	Thomas F. Neville
	MOTN	TCLAFFSD	Plaintiff American Semiconductor Inc.'s Motion To Compel Individual Depositions Of Defendants Gyle Yearsley, David Roberts And William Tiffany	Thomas F. Neville

Date	Code	User	Judge
4/18/2014	DECL	TCLAFFSD	Declaration Of Kennedy K Luvai In Support Of Plaintiff American Semiconductor Inc.'s Motion To Compel Individual Depositions Of Defendants Gyle Yearsley, David Roberts And William Tiffany
	MEMO	TCLAFFSD	Memorandum In Support of Plaintiff American Semiconductor Inc.'s Motion To Compel Individual Depositions Of Defendants Gyle Yearsley, David Roberts And William Tiffany
	NOTH	TCLAFFSD	Notice Of Hearing on Plaintiff American Semiconductor Inc.'s Motion To Compel Individual Depositions Of Defendants Gyle Yearsley, David Roberts And William Tiffany (5.2.14 at 11:00 AM)
	MOTN	TCLAFFSD	Plaintiff's Motions To Compel: (1) Production of Documents By Zilog; And (2) Resumption Of Zilog's Rule 30(b)(6) Deposition
	DECL	TCLAFFSD	Declaration of Kennedy K. Luvai In Support Of Plaintiff's Motions To Compel: (1) Production of Documents By Zilog; And (2) Resumption Of Zilog's Rule 30(b)(6) Deposition
	MEMO	TCLAFFSD	Memorandum In Support Of Plaintiff's Motions To Compel: (1) Production of Documents By Zilog; And (2) Resumption Of Zilog's Rule 30(b)(6) Deposition
	NOTH	TCLAFFSD	Notice Of Hearing On Plaintiff's Motions To Compel: (1) Production of Documents By Zilog; And (2) Resumption Of Zilog's Rule 30(b)(6) Deposition (5.2.14 at 11:00 AM)
	MEMO	CCHEATJL	Zilog, Inc's Memorandum In Support Of Motin For Protective Order
	DECL	CCHEATJL	Declaration Of Stephen RR Thomas In Support Of Zilog, Inc's Motion For Protective Order
	DECL	CCHEATJL	Declaration Of Rick White
	DECL	CCHEATJL	Declaration Of Dan Eaton In Support Of Zilog, Inc's Motion For Protective Order
	MOTN	CCHEATJL	Zilog, Inc's Motion To Compel
	MEMO	CCHEATJL	Memorandum In Support Of Zilog, Inc's Motion To Compel
	DECL	CCHEATJL	Declaration Of Stephen R Thomas In Support Of Zilog, Inc's Motion To Compel
			Document sealed
	NOHG	CCHEATJL	Notice Of Hearing On Zilog, Inc's Motion To Compel (May 2 2014@11am)
4/21/2014	NOTS	CCTHIEKJ	Notice Of Service
4/28/2014	AFFD	CCTHIEKJ	Affidavit of Gary L Cooper

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
4/28/2014	MEMO	CCTHIEKJ	Memorandum in Opposition to ASI's Motion to Compel Individual Depos Of Yearsley, Roberts and Tiffany Thomas F. Neville
	MEMO	CCOSBODK	Memorandum In Opposition To Motion To Compel Thomas F. Neville
	DECL	CCOSBODK	Declaration Of Cheryl L Dunham Thomas F. Neville
	DECL	CCOSBODK	Declaration Of David R Staab Thomas F. Neville
	DECL	CCOSBODK	Declaration Of Dan Eaton IN Opposition To Motion To Compel Thomas F. Neville
	NOTS	TCLAFFSD	Notice Of Service Of Plaintiff American Semiconductor, Inc.'s Response To Zilog, Inc.'s Third Set of Discovery Requests To Plaintiff Thomas F. Neville
	NOTS	TCLAFFSD	Notice Of Service Of Plaintiff American Semiconductor, Inc.'s Response To Zilog, Inc.'s Fourth Set of Discovery Requests To Plaintiff Thomas F. Neville
	OPPO	TCLAFFSD	American Semiconductor, Inc.'s Opposition To Zilog, Inc.'s Motion For Protective Order Thomas F. Neville
	OPPO	TCLAFFSD	American Semiconductor, Inc.'s Opposition To Zilog, Inc.'s Motion To Compel Thomas F. Neville
	DECL	TCLAFFSD	Declaration Of Doug Hackler In Support Of American Semiconductor, Inc.'s Opposition To Zilog, Inc.'s Motion To Compel Thomas F. Neville
	DECL	TCLAFFSD	Document sealed Declaration Of Kennedy K. Luvai In Support Of American Semiconductor, Inc.'s Opposition To Zilog, Inc.'s Motion To Compel Thomas F. Neville
4/30/2014	NOSV	CCHOLMEE	Notice Of Service (3) Thomas F. Neville
	REPL	TCLAFFSD	Reply In Further Support Of Plaintiff's Motions To Compel: (1) Production Of Documents By Zilog; And (2) Resumption Of Zilog's Rule 30(b)(6) Thomas F. Neville
	DECL	TCLAFFSD	Supplemental Declaration Of Kennedy K. Luvai In Support Of Plaintiff's Motions To Compel: (1) Production Of Documents By Zilog; And (2) Resumption Of Zilog's Rule 30(b)(6) Deposition Thomas F. Neville
	REPL	TCLAFFSD	American Semiconductor, Inc.'s Reply In Further Support Of Its Motion To Compel Individual Depositions Of Defendants Gyle Yearsley, David Roberts And William Tiffany Thomas F. Neville
5/2/2014	DCHH	DCELLISJ	Hearing result for Motion scheduled on 05/02/2014 11:00 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: For Protective Order & Motion To Compel LESS THAN 100 pages Thomas F. Neville
5/8/2014	STIP	CCHEATJL	Stipulation RE: Case Management deadlines Thomas F. Neville

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 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
5/14/2014	ORDR	DCELLISJ	Order Granting Stipulation re: Case Management Deadlines Thomas F. Neville
5/15/2014	NOTS	TCLAFFSD	Notice Of Service Thomas F. Neville
5/22/2014	NOSV	CCMURPST	Notice Of Service (05/20/2014) Thomas F. Neville
5/23/2014	STIP	CCHOLMEE	Stipulation Re Deposition Scheduling Thomas F. Neville
	NOTS	CCREIDMA	Notice Of Service of Plaintiff American Semiconductor, Inc's Eighth Supplemental Production of Documents and Records Thomas F. Neville
5/30/2014	NOTD	CCHEATJL	Amended Notice Of Taking Deposition Of Gayle Yearsley Thomas F. Neville
	NOTD	CCHEATJL	Amended Notice Of Taking Deposition Of William Tiffany Thomas F. Neville
	NOTD	CCHEATJL	Amended Notice Of Taking Deposition Of David Roberts Thomas F. Neville
	NOTC	CCHEATJL	Fifth Amended Notice Of Rule 30 (b) (6) Deposition Of Defendant Zilog Inc Thomas F. Neville
6/9/2014	NOTD	CCMCLAPM	Notice Of Deposition of Doug Hackler Thomas F. Neville
	NOTD	CCMCLAPM	Notice Of Deposition of Dale Wilson Thomas F. Neville
	NOTD	CCMCLAPM	Notice Of Deposition of Lorelli Hackler Thomas F. Neville
	NOTD	CCMCLAPM	Notice Of Deposition of Rich Chaney Thomas F. Neville
6/16/2014	NOTS	CCHEATJL	(3) Notice Of Service Thomas F. Neville
6/18/2014	ORDR	DCELLISJ	Order Granting Stipulation Regarding Deposition Schedule Thomas F. Neville
	ORDR	DCELLISJ	Order RE Zilog's Motion to Compel Thomas F. Neville
	ORDR	DCELLISJ	Order RE: Plaintiff's Motions To Compel Production of Documents by Zilog and (2)Resumption of Zilogs Rule 30(b)(6) Thomas F. Neville
	ORDR	DCELLISJ	Order Denying Zilog Inc.'s Motion for Protective Order Thomas F. Neville
	ORDR	DCELLISJ	Order Granting Plaintiff's Motion to Compel Individual Depositions of Defendants Roberts, Yearsley and Tiffany Thomas F. Neville
6/23/2014	NOTS	CCRADTER	(5) Notice Of Service Thomas F. Neville
	NOSC	TCLAFFSD	Notice Of Substitution Of Counsel (Stewart Taylor & Morris PLLC for Sage Silicon Solutions LLC, D. Roberts, G. Yearsley & W. Tiffany) Thomas F. Neville
6/26/2014	NOTS	TCLAFFSD	(4) Notice Of Service Thomas F. Neville
7/3/2014	MOTN	CCMARTJD	Motion for Sanctions Thomas F. Neville
	MISC	CCMARTJD	Declaration in Support of Motion for Sanctions Thomas F. Neville
			Document sealed
	MEMO	CCMARTJD	Memorandum in Support of Motion for Sanctions Thomas F. Neville
			Document sealed

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
7/3/2014	NOHG	CCMARTJD	Notice Of Hearing re Motion for Sanctions (7.18.14@9:30am)
7/7/2014	DECL	CCMCLAPM	Declaration of Kennedy K. Luvai in Support of Plaintiff Ameican Semiconductor INC Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages
	MEMO	CCMCLAPM	Document sealed Memorandum in Support of Plaintiff Ameican Semiconductor INC Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages
	MOTN	CCMCLAPM	Document sealed Plaintiff Ameican Semiconductor INC Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages
	DECL	CCMCLAPM	Declaration of Doug Hackler
	NOHG	CCMCLAPM	Notice Of Hearing RE: Plaintiff Ameican Semiconductor INC Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages 7.18.14 @ 9:30 AM
	HRSC	CCMCLAPM	Hearing Scheduled (Motion 07/18/2014 09:30 AM) Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages
7/9/2014	MISC	TCMEREKV	Defendant Zilog, Inc.'s Notice Of Errata Regarding Its Memorandum In Support Of Zilog, Inc.'s Motion For Sanctions
7/14/2014	OPPO	TCMEREKV	Opposition Of Sage Silcon Solutions, LLC, David Roberts, Gyle Yearsley, And William Tiffany To Plaintiff's Motion to Amend To Add Prayer For Punitive Damages
	MEMO	TCMEREKV	Document sealed Defendant Zilog, Inc.'s Memorandum In Opposition To Plaintiff's Motion To Amend Second Amended Complaint To Add Prayer For Punitive Damages
	DECL	TCMEREKV	Document sealed Declaration Of Rick White In Support Of Defendant Zilog, Inc.'s Opposition To Plaintiff's Motion To Amend Second Amended Complaint To Add Prayer For Punitive Damages
	DECL	TCMEREKV	Declaration Of Gerald T. Husch In Opposition To Plaintiff's Motion To Amend Second Amended Complaint To Add Prayer For Punitive Damages
	DECL	CCHEATJL	Document sealed Declaration Of David R Staab In Opposition To Plaintiff's Motion To Amend Second amended Complaint To Add Prayer For Punitive Damages

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
7/14/2014	OPPO	CCMCLAPM	Plantiffs American Semiconductor INCs Opposition to Zilog Incs Motion for Sanctions Document sealed Thomas F. Neville
	DECL	CCMCLAPM	Declaration Kennedy K. Luvai in Supoort of Plaintiff American Semiconductor INCs Opposition to Zilog Incs Motion for Sanctions Document sealed Thomas F. Neville
	AFFD	CCVIDASL	Affidavit of Gary L Cooper Document sealed Thomas F. Neville
7/16/2014	REPL	TCMEREKV	Reply In Support Of Zilog, Inc.'s Motion For Sanctions Document sealed Thomas F. Neville
	RPLY	CCMARTJD	Reply in Further Support of Motion to Amend Second Amended Complaint Document sealed Thomas F. Neville
	MISC	CCMARTJD	Supplemental Declaration in Further Support of Motion to Amend Second Amended Complaint Document sealed Thomas F. Neville
7/18/2014	DCHH	DCELLISJ	Hearing result for Motion scheduled on 07/18/2014 09:30 AM: District Court Hearing Held Court Reporter: Vanessa Gosney Number of Transcript Pages for this hearing estimated: Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages and Motion for Sanctions LESS THAN \$200 Thomas F. Neville
7/22/2014	NOTS	TCLAFFSD	Notice Of Service Thomas F. Neville
7/23/2014	NOTS	CCSCOTDL	Notice Of Service of Zilog Incs Fifth Set of Discovery Requests to Plaintiff Thomas F. Neville
7/24/2014	NOTS	TCLAFFSD	(4) Notice Of Service Thomas F. Neville
	NOTS	CCSCOTDL	Notice Of Service Thomas F. Neville
7/25/2014	NOTS	CCWEEKKG	Notice Of Service Thomas F. Neville
7/28/2014	NOTS	CCTHIEKJ	Notice Of Service Thomas F. Neville
	NOTS	CCTHIEKJ	Notice Of Service Thomas F. Neville
	NOTS	CCTHIEKJ	Notice Of Service Thomas F. Neville
7/29/2014	NOTS	TCMEREKV	Notice Of Service Of Defendant Zilog, Inc's Third Supplemental Responses To Plaintiff's Fourth And Fifth Sets Of Requests For Production Thomas F. Neville
8/1/2014	NOTS	TCMEREKV	Notice Of Service Thomas F. Neville
8/5/2014	NOTS	CCRADTER	Notice Of Service Thomas F. Neville
8/11/2014	NOTS	TCMEREKV	Notice Of Service Thomas F. Neville
8/15/2014	NOTS	TCMEREKV	Notice Of Service Thomas F. Neville
	NOTS	CCTHIEKJ	Notice Of Service Thomas F. Neville
8/18/2014	NOTS	CCSCOTDL	Notice Of Service Thomas F. Neville
	NOTS	CCSCOTDL	Notice Of Service Thomas F. Neville

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
8/19/2014	MOTN	CCSCOTDL	American Semiconductor Incs Motion for Voluntary Dismissal of Its Claims for Misappropriation of Trade Secrets Improper Appropriation of Name Consumer Protection Act and Injunctive Relief
	NOTC	CCSCOTDL	Notice of Deposition of Rick White
8/20/2014	AMEN	CCTHIEKJ	Amended Notice of Deposition of Lorelli Hackler
8/22/2014	NOTS	CCSCOTDL	Notice Of Service of Plaintiff American Semiconductor Incs Objections to Zilog Incs Sixth Set of Discovery Requests
	NOTS	CCSCOTDL	Notice Of Service of Plaintiff American Semiconductor Incs Objections to Zilog Incs Fifth Set of Discovery
8/27/2014	ORDR	DCELLISJ	Order On Plaintiff's Motion to Add A Claim for Punitive Damages (Denied)
	ORDR	DCELLISJ	Order On Zilog's Motion for Sanctions
	NOTC	TCMEREKV	Notice Of Errata RE: American Semiconductor Inc.'s Motion For Voluntary Dismissal Of Its Claims For Disappropriation Of Trade Secrets, Imrpoper Apprapriation Of Name, Consumer Protection Act, And Injunctive Relief
	NOTS	TCMEREKV	Notice Of Service
8/28/2014	NOTC	TCMEREKV	Notice Of Opposition To Proposed Order On Voluntary Dismissal
	NOTC	TCLAFFSD	Notice Of Zilog, Inc's Objection To American Semiconductor Incs (Proposed) Order Granting American Semiconductor, Inc's Motion For Voluntary Dismissal of It's Claims For Misappropriation Of Trade Secrets, Improper Appropriation Of Name, Consumer Protection Act & Injunctive Relief
8/29/2014	MOSJ	TCLAFFSD	Defendant Zilog, Inc's Motion For Summary Judgment
	DECL	TCLAFFSD	Declaration Of Gerald T Husch In Support of Zilog, Inc's Motion For Summary Judgment Document sealed
	MEMO	TCLAFFSD	Memorandum In Support Of Zilog, Inc's Motion For Summary Judgment Document sealed
	NOTH	TCLAFFSD	Notice Of Hearing On Zilog, Inc's Motion For Summary Judgment (9.26.14 @ 9:00 AM)
	HRSC	TCLAFFSD	Hearing Scheduled (Motion for Summary Judgment 09/26/2014 09:00 AM)
	MOTN	CCTHIEKJ	American Semiconductor, Inc.'s Motion for Summary Judgment RE: Defendants Robrtts, Yearsley and Tiffany's Counterclaims



Date	Code	User	Judge
8/29/2014	AFFD	CCTHIEKJ	Affidavit of Sarah H Arnett In Support of American Semiconductor, Inc.'s Motion for Summary Judgment
			Document sealed
	MEMO	CCTHIEKJ	Memorandum In Support of American Semiconductor, Inc.'s Motion for Summary Judgment Re: Defendants Roberts, Yearsley and Tiffany's Counterclaims
			Document sealed
	NOHG	CCTHIEKJ	Notice Of Hearing on American Semiconductor Inc.'s Motion for Summary Judgment RE: Defendants Roberts, Yearsley and Tiffany's Counterclaims (9.26.14@ 9:00am)
	MOTN	CCTHIEKJ	American Semiconductor, Inc.'s Motion for Partial Summary Judgment RE: Claims Against Defendants Roberts, Yearsley, Tiffany and Sage Silicon Solutions LLC
	MEMO	CCTHIEKJ	Memorandum in Support of American Semiconductor, Inc.'s Motion for Partial Summary Judgment RE: Claims Against Defendants Roberts, Yearsley, Tiffany and Sage Silicon Solutions LLC
			Document sealed
	NOHG	CCTHIEKJ	Notice Of Hearing on American Semiconductor, Inc.'s Motion for Partial Summary Judgment RE: Claims Against Defendants Roberts, Yearsley, Tiffany and Sage Silicon Solutions LLC (9.26.14 @ 9:00am)
	MOTN	CCVIDASL	Motion for Summary Judgment by Sage Silicon Solutions LLC David Roberts Gyle Yersley and William Tiffany
	AFFD	CCVIDASL	Affidavit of Gary L Cooper in Support of Motion for Summary Judgment
			Document sealed
	AFFD	CCVIDASL	Affidavit of Dr John Janzen
	MEMO	CCVIDASL	Memorandum in Support of Motion for Summary Judgment by Sage Silicon Solutions LLC David Roberts Gyle Yersley and William Tiffany
			Document sealed
	MOTN	CCVIDASL	Motion in Limine to Exclude Expert Report and Testimony of Stephen Holland
	AFFD	CCVIDASL	Affidavit of Gyle Yearlsey
	AFFD	CCVIDASL	Affidavit of David Roberts
	AFFD	CCVIDASL	Affidavit of William Tiffany
	MEMO	CCVIDASL	Memorandum in Support of Motion in Limine to Exclude Expert Report and Testimony of Stephen Holland
			Document sealed

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 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
8/29/2014	NOHG	CCVIDASL	(2) Notice Of Hearing Re Motion for Summary Judgment and Motion in Limine to Exclude Expert Report and Testimony of Stephen Holland (8.26.14 @ 9:00 AM) Thomas F. Neville
9/2/2014	MOTN	TCMEREKV	Motion To Exceed Page Limit RE: American Semiconductor, Inc's Motion For Partial Summary Judgment RE: Claims Against Defendants Roberts, Yearsley, Tiffant And Sage Silicon Solutions, LLC Thomas F. Neville
	MOTN	TCMEREKV	Motion To Exceed Page Limit RE: American Semiconductor Inc.'s Motion For Summary Judgment RE: Defendants Roberts, Yearsley And Tiffany's Counterclaims Thomas F. Neville
9/3/2014	MISC	CCMURPST	American Semiconductor Inc.'s Lay Witness Disclosure Thomas F. Neville
	NOTS	TCMEREKV	Notice Of Service Thomas F. Neville
	MISC	CCRADTER	Zilog's Disclosure of Lay and Expert Witnesses Thomas F. Neville
9/4/2014	MISC	CCTHIEKJ	Zilog's Supplemental Disclosure of Lay and Expert Witnesses Thomas F. Neville
9/5/2014	NOTS	CCTHIEKJ	Notice Of Service Thomas F. Neville
	NOTS	CCVIDASL	Notice Of Service of Expert Reports Thomas F. Neville
	NOTC	CCTHIEKJ	Zilog, Inc.'s Notice of Production of Documents Considered by Defendants' Expert Charles R Donohoe Thomas F. Neville
9/12/2014	ORDR	DCELLISJ	Order RE: Motion to Exceed Page Limit RE: AM Semiconductor's MSJ Thomas F. Neville
	MEMO	CCVIDASL	Memorandum Opposing ASIs Motion for Partial Summary Judgment Re Claims Against Roberts Yearslay Tiffany and Sage Silicon Solutions Thomas F. Neville
	OPPO	TCMEREKV	Document sealed Opposition To Motion For Summary Judgment Thomas F. Neville
	OPPO	TCMEREKV	Document sealed Opposition To Motion For Summary Judgment Thomas F. Neville
	AFFD	TCMEREKV	Document sealed Second Affidavit Of Sarah H. Arnett In Support Of Oppositions To Motion For Summary Judgment Thomas F. Neville
	AFFD	CCMARTJD	Document sealed Affidavit of Chad Bernards in Opposition to Motion for Summary Judgment Thomas F. Neville
	MEMO	CCMARTJD	Document sealed Memorandum in Opposition to Motion for Summary Judgment Thomas F. Neville
	AFFD	CCMARTJD	Document sealed Affidavit of David Roberts in Opposition to Motion for Summary Judgment Thomas F. Neville
			Document sealed

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
9/12/2014	MOTN	CCTHIEKJ	Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11 (a)(1) Thomas F. Neville
	MISC	CCTHIEKJ	Declaration of Dan Eaton in Support of Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11 (a)(1) Thomas F. Neville
	MISC	CCTHIEKJ	Declaration of Monte Dalrymple in Support of Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11 (a)(1) Thomas F. Neville
	MISC	CCTHIEKJ	Document sealed Declaration of David Stabb in Support of Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11 (a)(1) Thomas F. Neville
	MISC	CCTHIEKJ	Document sealed Declaration of Gerald T Husch in Support of Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11 (a)(1) Thomas F. Neville
	MEMO	CCTHIEKJ	Document sealed Memorandum in Support of Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11 (a)(1) Thomas F. Neville
	NOHG	CCTHIEKJ	Notice Of Hearing on Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11 (a)(1) (9.26.14 @ 9:00am) Thomas F. Neville
9/15/2014	NOTS	CCSCOTDL	(2) Notice Of Service Thomas F. Neville
9/17/2014	NOTS	CCMCLAPM	Notice Of Service Thomas F. Neville
9/19/2014	NOTS	CCTHIEKJ	Notice Of Service Thomas F. Neville
	MOTN	CCMARTJD	American Semiconductor, INC'S Motion to Continue the Hearing on Zilog's Renewed Motion for Sanctions Thomas F. Neville
	NOTH	CCMARTJD	Notice Of Hearing on American Semiconductor, INC's Motion for Continuance of Hearing on Zilog's Motion for Sanctions (9.26.14 @ 9 AM) Thomas F. Neville
	MOTN	CCMARTJD	American Semiconductor, INC's Motion for Order Shortening Time to Hear Motion to Continue Zilog's Motions for Sanctions Thomas F. Neville
	MEMO	CCVIDASL	Reply Memorandum in Support of Defendant Zilog Incs Motion for Summary Judgment Thomas F. Neville

Date	Code	User	Judge
9/19/2014	RPLY	CCVIDASL	Reply in Further Support of American Semiconductor Incs Motion for Partial Summary Judgment Re Claims Against Defendants Roberts Yearsley Tiffany and Sage Silicon Solutions LLC Document sealed Thomas F. Neville
	RPLY	CCVIDASL	Reply in Further Support of American Semiconductor Incs Motion for Summary Judgment Re Defendants Roberts Yearsley and Tiffanys Counterclaims Document sealed Thomas F. Neville
	AFFD	CCVIDASL	Third Affidavit of Sarah H Arnett in Further Support of American Semiconductor Incs Motions for Summary Judgment Document sealed Thomas F. Neville
	RPLY	CCTHIEKJ	Reply Memorandum in Support of Motion for Summary Judgment by Sage Silicon Solutions, llc, David Roberts, Gyle Yearsley, and William Tiffany Document sealed Thomas F. Neville
	MOTN	CCTHIEKJ	Motion To Strike Portions of Second Affidavit of Sarah H Arnett in Support of Oppositions to Motion for Summary Judgment Thomas F. Neville
	MOTN	CCTHIEKJ	Motion to Exceed Page Limit RE: Memorandum Opposing ASI's Motion for Partial Summary Judgment RE: Claims Against Roberts, Yearsley, Tiffany and Sage Silicon Solutions Thomas F. Neville
	NOHG	CCTHIEKJ	Notice Of Hearing (9.26.14 @ 9:00am) Thomas F. Neville
9/22/2014	MOTN	CCVIDASL	Joinder With Zilog Incs Renewed Motion for Sanctions Thomas F. Neville
	MOTN	TCMEREKV	Motion To Exceed Page Limit RE: American Semiconductor, Inc's Opposition To Zilog, Inc's Motion For Summary Judgment And Reply In Further Support Of Motion For Partial Summary Judgment RE: Claims Against Defendants Roberts, Yearsley, Tiffany, And Sage Silicon Solutions LLC Thomas F. Neville
	AFFD	TCMEREKV	Affidavit Of Stephen D. Holland Document sealed Thomas F. Neville
	OPPO	TCMEREKV	Opposition To Motion In Limine To Exclude Expert Report And Testimony Of Stephen Holland Document sealed Thomas F. Neville
	AFFD	TCMEREKV	Affidavit Of Stephen D. Holland In Opposition To Motion In Limine Document sealed Thomas F. Neville
	AFFD	TCMEREKV	Affidavit Of Richard S. Hoffman, CPA/ABV Document sealed Thomas F. Neville

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Date	Code	User	Judge
9/23/2014	MOTN	CCTHIEKJ	American Semiconductor Inc.'s Opposition to Roberts, Yearsley, Tiffany and Sage's Motion to Strike Portions of Second Affidavit of Sarah H Arnett in Support of Oppositions to Motion for Summary Judgment
9/24/2014	OPPO	CCMCLAPM	Zilog Incs Opposition to American Semiconductor Incs Motion to Continue the Hearing on Zilogs Renewed Motion for Sanctions Pursuat to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1)
	DECL	CCSCOTDL	Declaration of Kennedy Luvai in Support of American Semiconductor Incs Motion for Continuance of Zilogs Motion for Sanctions
	REPL	CCSCOTDL	American Semiconductor Incs Reply in Support of its Motion to Continue the Hearing on Zilogs Renewed Motion for Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1)
9/25/2014	AFFD	CCRADTER	Fourth Affidavit of Sarah H Arnett Providing Supplemental Authority in Further Support of Opposition to Zilog's Motion for Summary Judgment
	OBJT	CCMCLAPM	Zilogs Inc Objection and Motion to Strike Fourth Affidavit of Sarah H Arnett
	MEMO	CCMCLAPM	Memorandum in Support of Zilogs Inc Objection and Motion to Strike Fourth Affidavit of Sarah H Arnett
	MOTN	CCMCLAPM	Zilogs Inc Objection and Motion to Strike Fourth Affidavit of Sarah H Arnett
	NOHG	CCMCLAPM	Notice Of Hearing RE: Zilogs Inc Objection and Motion to Strike Fourth Affidavit of Sarah H Arnett 9.26.14 @ 9:00 AM
9/26/2014	DCHH	DCELLISJ	Hearing result for Motion for Summary Judgment scheduled on 09/26/2014 09:00 AM: District Court Hearing Held Court Reporter: VANESSA GOSNEY AND CHRISTINE VALCICH Number of Transcript Pages for this hearing estimated: and Motion in Limine to Exclude Expert Report and Testimony of Stephen Holland and Motion for Continuance and Sanctions and Zilogs Inc Objection and Motion to Strike Fourth Affidavit of Sarah H Arnett
10/3/2014	NOTS	CCRADTER	Notice Of Service
	NOTS	TCLAFFSD	(5) Notice Of Service
	NOTD	TCLAFFSD	Notice Of Taking Deposition Of Monte Dalrymple
	NOTD	TCLAFFSD	Notice Of Taking Deposition Of Charles R Donohoe

Date	Code	User		Judge
10/3/2014	NOTD	TCLAFFSD	Notice Of Taking Deposition Of John N Janzen	Thomas F. Neville
	NOTS	CCGARCOS	Notice Of Service of Zilog, INC.'S Eighth Set of Discovery Requests to Plaintiff	Thomas F. Neville
10/6/2014	OBJC	CCVIDASL	Zilog Incs Objection to Notice of Deposition Duces Tecum of John M Janzen	Thomas F. Neville
	OBJC	CCVIDASL	Zilog Incs Objection to Notice of Deposition Duces Tecum of Monte Dalrymple	Thomas F. Neville
	OBJC	CCVIDASL	Zilog Incs Objections to Notice of Deposition Duces Tecum of Charles R Donohoe	Thomas F. Neville
	NOTS	CCVIDASL	Notice Of Service of Zilog Incs Sixth Set of Discovery Requests to Plaintiff	Thomas F. Neville
10/8/2014	NOTS	TCLAFFSD	Notice Of Service	Thomas F. Neville
10/9/2014	CONT	DCELLISJ	Continued (Pretrial Conference 11/14/2014 10:00 AM)	Thomas F. Neville
10/10/2014	NOTC	CCMCLAPM	Notice of Rule 30(b)(6) Deposition of American Semiconductor Inc	Thomas F. Neville
10/14/2014	MOTN	CCMARTJD	Motion in Limine to Preclude ASI from Raising the Issue of Failure to Assign Inventions	Thomas F. Neville
	NOHG	CCMARTJD	Notice Of Hearing re Motion in Limine to Preclude ASI from Raising the Issue of Failure to Assign Inventions (11.14.14@9am)	Thomas F. Neville
	AMEN	CCMARTJD	Amended Notice of Hearing re Motion in Limine to Exclude Expert Report and Testimony of Stephen Holland (11.14.14@9am)	Thomas F. Neville
	HRSC	CCMARTJD	Hearing Scheduled (Motion 11/14/2014 09:00 AM) Motion in Limine to Preclude ASI from Raising the Issue of Failure to Assign Inventions	Thomas F. Neville
10/15/2014	NOTC	CCVIDASL	Notice of Deposition of Dennis R Reinstein CPA/ABV ASA CVA	Thomas F. Neville
	OBJC	CCVIDASL	Objections and Responses to Notice of Rule Deposition of American Semiconductor Inc	Thomas F. Neville
	NOTC	CCVIDASL	Notice of Service of American Semiconductor Incs Tenth Supplemental Responses to Zilog Incs First Set of Discovery Requests	Thomas F. Neville
10/16/2014	AMEN	CCTHIEKJ	Amended Notice of Deposition of Dennis R Reinstein, CPA/ABV,ASA,CVA	Thomas F. Neville
10/17/2014	NOTC	TCMEREKV	Notice Of Deposition Duces Tecum Of Richard S. Hoffman, CPA, ABV	Thomas F. Neville
10/20/2014	AMEN	TCMEREKV	Amended Notice Of Deposition Duces Tecum Of Stephen D Holland	Thomas F. Neville
10/21/2014	NOTC	CCVIDASL	Notice of Deposition Duces Tecum of Stephen D Holland	Thomas F. Neville
10/22/2014	OBJT	TCLAFFSD	Objection To Request To Produce Materials At Deposition Of Dennis Reinstein	Thomas F. Neville

Date	Code	User	Judge
10/22/2014	MOTN	TCLAFFSD	Motion In Limine To Preclude ASI From Raising The Issue Of Improper Use Or Misappropriation Of Confidential Information By Roberts, Yearsley, & Tiffany
	NOTH	TCLAFFSD	Notice Of Hearing (11.14.14 at 9:00 AM)
10/24/2014	MOTN	TCMEREKV	Motion To Reconsider
	NOTH	TCMEREKV	Notice Of Hearing RE: Motion To Reconsider 11.14.14 @ 9:00 AM
	MEMO	TCMEREKV	Memorandum In Support Of Motion For Reconsideration
10/28/2014	MOTN	TCMEREKV	Motion In Limine To Exclude Expert Report And Testimony Or Richard S Hoffman Regarding Lost Profits
			Document sealed
	MEMO	TCMEREKV	Memorandum In Support Of Motion In Limine Of Hoffman's Expert Opinions
	NOTH	TCMEREKV	Notice Of Hearing RE: Motion In Limine to Exclude Expert Report And Testimony Of Richard S Hoffman Regarding Lost Profits 11.14.14 @ 9:00 AM
10/29/2014	OBJT	TCLAFFSD	American Semiconductor, Inc's Objections To Amended Notice Of Deposition Duces Tecum Of Stephen D Holland
	OBJT	TCLAFFSD	American Semiconductor, Inc's Objections To Notice Of Deposition Duces Tecum Of Richard S Hoffman, CPA, ABV
10/30/2014	NOTS	CCTHIEKJ	Notice Of Service
10/31/2014	MOTN	CCTHIEKJ	Zilog's Motion for Reconsideration
	MEMO	CCTHIEKJ	Memorandum in Support of Zilog's Motion for Reconsideration
	MOTN	CCTHIEKJ	Zilog's Motion in Limine Re: Testimony of Richard Hoffman, CPA/ABV
	MEMO	CCTHIEKJ	Memorandum in Support of Zilog's Motion in Limine Re: Testimony of Richard S Hoffman, CPA/ABV
	MOTN	CCTHIEKJ	Zilog's Motions in Limine Re: (1) Misappropriation of ASI's Confidential Information and (2) ASI's Alleged Prospective Economic Expectancy With Zilog
	MEMO	CCTHIEKJ	Memorandum in Support of Zilog's Motions in Limine Re: (1) Misappropriation of ASI's Confidential Information and (2) ASI's Alleged Prospective Economic Expectancy With Zilog
	MISC	CCTHIEKJ	Declaration of Gerald T Husch RE: Zilog's Pretrial Motions

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
10/31/2014	OBJT	CCTHIEKJ	Zilog's Joinder in Objection to Produce Materials at Deposition of Dennis Reinstein
	NOHG	CCTHIEKJ	Notice Of Hearing (11.14.14 @ 10:00 am)
	MOTN	CCMARTJD	Motion in Limine No. 1 Re Defense Expert John Janzen
	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 1 Re Defense Expert John Janzen
	MOTN	CCMARTJD	Motion in Limine No. 2 re Defense Expert Charles Donohoe
	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 2 re Defense Expert Charles Donohoe
			Document sealed
	MOTN	CCMARTJD	Motion in Limine No. 3 Re Defendants Improper Non Retained Expert Opinions
	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 3 Re Defendants Improper Non Retained Expert Opinions
	MOTN	CCMARTJD	Motion in Limine No. 4 Re Defense Expert Monte Dalrymple
	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 4 Re Defense Expert Monte Dalrymple
			Document sealed
	MOTN	CCMARTJD	Motion in Limine No. 5 re: Quantum Meruit and Unjust Enrichment Counterclaims
	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 5 re: Quantum Meruit and Unjust Enrichment Counterclaims
	MOTN	CCMARTJD	Motion in Limine No. 6 Re Fraud/Fraud in the Inducement Counterclaim
	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 6 Re Fraud/Fraud in the Inducement Counterclaim
	MOTN	CCMARTJD	Motion in Limine No. 7 re Unenforceable Discussion Points and Inadmissible Parol Evidence
	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 7 re Unenforceable Discussion Points and Inadmissible Parol Evidence
	MOTN	CCMARTJD	Motion in Limine No. 8 Re Voluntarily Dismissed Claims
	MOTN	CCMARTJD	Motion in Limine No. 9 Re Ineffectual Contract "Modification" Suggestions
	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 9 Re Ineffectual Contract "Modification" Suggestions



Date	Code	User	Judge
10/31/2014	MOTN	CCMARTJD	Motion in Limine No. 10 Re Non Probative Wage or Salary Testimony
	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 10 Re Non Probative Wage or Salary Testimony
	MOTN	CCMARTJD	Motion in Limine No. 11 re Undisclosed Licenses
	MEMO	CCMARTJD	Memorandum in Support of Motion in Limine No. 11 Re Zilogs Undisclosed Licenses
	DECL	CCMARTJD	Declaration of Kennedy Luvai in Support of Plaintiffs Motions in Limine
			Document sealed
	NOHG	CCMARTJD	Notice Of Hearing on Motions in Limine Nos 1-11 (11.14.14@9am)
11/3/2014	NOTS	CCMARTJD	Notice Of Service
11/4/2014	NOTS	CCMARTJD	(2) Notice Of Service
11/5/2014	NOTS	CCMCLAPM	Notice Of Service
11/7/2014	OPPO	CCHEATJL	SAGE Defendants' Opposition To ASI's Motion In Limine No 1 And No 10
	OPPO	CCHEATJL	SAGE Defendants' Opposition To ASI's Motion In Limine No 2 RE: Expert Charles Donohoe
	OPPO	CCHEATJL	SAGE Defendants' Opposition To ASI's Motion In Limine No 3 RE: Defendant's Improper Non-Retained Expert OPinions
	OPPO	CCHEATJL	Joinder With Zilog, Inc's Opposition To ASI's Motion In Limine No 4
	OPPO	CCHEATJL	SAGE Defendants' Opposition To ASI's Motion In Limine No 5 RE: Counterclaims For Quantum Meruit And Unjust Enrichment
	OPPO	CCHEATJL	SAGE Defendants' Opposition To ASI's Motion In Limine No 6, No 7, And No 9
	OPPO	CCHEATJL	SAGE Defendants' Opposition To ASI's Motion In Limine No 8 RE: Voluntarily Dismissed Claims
	OPPO	CCHEATJL	SAGE Defendants' Opposition To ASI's Motion In Limine No 11
	OPPO	CCMCLAPM	Zilogs Joinder in Sage Defendants Opposition to ASI's Motion in Limine NO.8 RE: Voluntarily Dismissed Claims
	OPPO	CCMCLAPM	Zilogs Incs Opposition to ASI's Motion in Limine NO.11 RE: Undisclosed Licenses
			Document sealed
	DECL	CCMCLAPM	Declaration of Gerald T. Husch in Opposition to Plaintiffs Motion in Limine NO.11 RE: Undisclosed Licenses
			Document sealed

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
11/7/2014	DECL	CCMCLAPM	Declaration of David R. Staab in Opposition to Plaintiffs Motion in Limine NO.11 RE: Undisclosed Licenses Document sealed Thomas F. Neville
	OPPO	CCMCLAPM	Zilogs Incs Opposition to Motion in Limine NO. 2 RE: Defense Expert Charles Donohoe Document sealed Thomas F. Neville
	OPPO	CCMCLAPM	Zilogs Incs Opposition to Motion in Limine NO. 2 RE: Defense Expert Monte Dalrymple Document sealed Thomas F. Neville
	DECL	CCMCLAPM	Declaration of Gerald T. Husch in Opposition to Plaintiffs Motion in Limine NO. 4 RE: Defense Expert Monte Dalrymple Document sealed Thomas F. Neville
	DECL	CCMCLAPM	Declaration of Gerald T. Husch in Opposition to Plaintiffs Motion in Limine NO. 4 RE: Defense Expert Charles Donohoe Document sealed Thomas F. Neville
	DECL	CCMCLAPM	Declaration of Monte Dalrymple in Opposition to Plaintiffs Motion in Limine NO. 4 RE: Defense Expert Monte Dalrymple Document sealed Thomas F. Neville
	OPPO	TCLAFFSD	American Semiconductor, Inc's Opposition To Zilog's Motion For Reconsideration Document sealed Thomas F. Neville
	OPPO	TCLAFFSD	American Semiconductor, Inc's Opposition To Zilog's Motions In Limine Re: (1) Misappropriation of ASI's Confidential Information And (2) ASI's Alleged Prospective Economic Expectancy With Zilog Thomas F. Neville
	DECL	TCLAFFSD	Declaration Of Kennedy K. Luvai In Support Of ASI's Oppositions To Defendants' Pretrial Motions Document sealed Thomas F. Neville
	OPPO	TCLAFFSD	American Semiconductor, Inc's Opposition Motion In Limine To Preclude ASI From Raising The Issue Of Improper Use or Misappropriation of Confidential Information By Roberts, Yearsley And Tiffany Document sealed Thomas F. Neville
	OPPO	TCLAFFSD	American Semiconductor, Inc's Opposition To Sage Defendants' Motion To Reconsider Document sealed Thomas F. Neville
	OPPO	TCLAFFSD	American Semiconductor, Inc's Opposition To Sage Defendants' Motion In Limine To Exclude Expert Report & Testimony Of Richard S Hoffman Regarding Lost Profits Document sealed Thomas F. Neville

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
11/7/2014	OPPO	TCLAFFSD	American Semiconductor, Inc's Opposition To Motion In Limine To Preclude It From Raising The Issue Of Failure To Assign Inventions By Roberts, Yearsley & Tiffany Document sealed
	OPPO	TCLAFFSD	American Semiconductor, Inc's Opposition To Zilog's Motion In Limine Re: Testimony Of Richard S Hoffman, CPA/ABV Document sealed
11/12/2014	AFFD	CCBARRSA	Affidavit of John D. Oborn in Support of the Sage Defendants' Motion in Limine Document sealed
	RPLY	CCMCLAPM	Sage Defendants Reply to ASI's Opposition to the Motion in Limine RE: Improper Use or Misappropriation of Confidential Information
	RPLY	CCMCLAPM	Reply to AMERICAN Semiconductor Inc's Opposition to Roberts Yearsley, Tiffany and Sages Motion in Limine to Exclude Expert Report and Testimony of Stephen Holland
	RPLY	CCMCLAPM	Reply to American Semiconductor Inc's Opposition to Sages Defendants Motion to Reconsider
	RPLY	CCMCLAPM	Reply Memorandum in Support of Motion in Limine of Hoffmans Expert Opinion
	DECL	CCMARTJD	Supplemental Declaration of Kennedy Luvai in Support of Motions in Limine Document sealed
	RPLY	CCMARTJD	Reply in Further Support of Motions in Limine 1 & 10 re Defense Expert John Janzen
	RPLY	CCMARTJD	Reply in Further Support of Motion in Limine No. 2 re Defendants Expert Witness Charles Donohoe Document sealed
	RPLY	CCMARTJD	Reply in Further Support of Plaintiffs Motion in Limine No. 3 Re Defendants Improper Non Retained Expert Opinions
	RPLY	CCMARTJD	Reply in Further Support of Plaintiffs Motion in Limine No. 4 re Defendants Expert Witness Monte Dalrymple Document sealed
	RPLY	CCMARTJD	Reply in Further Support of Plaintiffs Motion in Limine No. 5 re Quantum Meruit and Unjust Enrichment Counterclaims
	RPLY	CCMARTJD	Reply in Further Support of Plaintiffs Motion in Limine Nos. 6,7 & 9 re Fraud/Fraud in the Inducement Counterclaim
	RPLY	CCMARTJD	Reply in Further Support of Plaintiffs Motion in Limine No. 8 re Voluntary Dismissed Claims

Date	Code	User	Judge
11/12/2014	RPLY	CCMARTJD	Reply in Further Support of Plaintiffs Motion in Limine No. 11 re Zilogs Undisclosed Licenses Thomas F. Neville
	REPL	CCRADTER	Sage Defendants' Reply to Asi's Opposition to the Motion in Limine RE: Failure to Assign Inventions Thomas F. Neville
	RPLY	CCMARTJD	Reply in Support of Zilogfs Motion in Limine re Testimony of Richard S Hoffman Thomas F. Neville
			Document sealed
	RPLY	CCMARTJD	Reply Memorandum in Support of Zilogs Motion for Reconsideration Thomas F. Neville
	RPLY	CCMARTJD	Reply in Support of Zilogs Motions in Limine re Misappropriation of Asi's Confidential Information and Asi's Alleged Prospective Economic Expectancy With Zilog Thomas F. Neville
	NOTC	CCMARTJD	Notice of Errata re Declaration of Kennedy K Luvai in Support of Asi's Oppositions to Defendatns Pretrial Motions Thomas F. Neville
11/13/2014	ORDR	DCELLISJ	Order Granting Am Semiconductor Motion for Voluntary Dismissal of Certain Claims Thomas F. Neville
	ORDR	DCELLISJ	Order Denying IN Part and Granting IN Part Zilogs Inc's Motion for summary Judgment Thomas F. Neville
	ORDR	DCELLISJ	Order Denying ASI's Motion for Partial Summary judgment Against Sage Defendants Thomas F. Neville
	ORDR	DCELLISJ	Order Granting in Part and Denying in Part Sage Defendants' Motion for Summary Judgment Against American Semiconductor Inc. Thomas F. Neville
	ORDR	DCELLISJ	Order Denying Plaintiffs Motion for Summary Judgment RE: Defendants Roberts Yearsley and Tiffany's Counterclaims Thomas F. Neville
	OBJE	CCRADTER	Objection to New Arguments in Safe Defendants' Reply RE: Stephen Holland; and Surreply Thomas F. Neville
11/14/2014	CONT	DCELLISJ	Continued (Jury Trial 01/05/2015 09:00 AM) Thomas F. Neville
	CONT	DCELLISJ	Continued (Pretrial Conference 12/23/2014 01:30 PM) Thomas F. Neville
		DCELLISJ	Notice of Jury/Court Trial Re-Setting Thomas F. Neville
11/17/2014	HRSC	DCELLISJ	Hearing Scheduled (Motion in Limine 12/09/2014 01:30 PM) Thomas F. Neville
	DCHH	DCELLISJ	Hearing result for Motion scheduled on 11/14/2014 09:00 AM: District Court Hearing Held Court Reporter: SUE WOLF Thomas F. Neville
			Number of Transcript Pages for this hearing estimated: Motion in Limine to Preclude ASI from Raising the Issue of Failure to Assign Inventions AND Motion In Limine to Exclude Expert Report And Testimony Of Richard S Hoffman Regarding Lost Profits and Motions in Limine Nos 1-11 LESS THAN 300 pages

Date	Code	User	Judge
11/25/2014	MOTN	CCVIDASL	Plaintiffs Motion in Limine NO 12 Re Zilogs Improperly Withheld Meeting Minutes
	DECL	CCVIDASL	Second Supplemental Declaration of Kennedy K Luvai in Support of Plaintiffs Motion in Limine
	MEMO	CCVIDASL	Memorandum in Support of Plaintiffs Motion in Limine NO 12 Re Zilogs Improperly Withheld Meeting Minutes
	NOHG	CCVIDASL	Notice Of Hearing on Plaintiffs Motion in Limine (12.09.14 @ 1:30 PM)
11/26/2014	MOTN	CCMCLAPM	Plaintiffs Motion in Limine NO. 13 to Preclude Jointly Retained Defense Expert Dennis Reinstains Untimely Disclosed Expert Opinions
	MEMO	CCMCLAPM	Memorandum in Support of Plaintiffs Motion in Limine NO. 13 to Preclude Jointly Retained Defense Expert Dennis Reinstains Untimely Disclosed Expert Opinions
			Document sealed
	DECL	CCMCLAPM	Third Supplemental Declaration of Kennedy K Luvai in Support of Plaintiffs Motion in Limine
			Document sealed
	MOTN	CCMCLAPM	Motion for Order Shortening Time for Briefing and Hearing on Plaintiffs Motion in Limine NO.13
	NOHG	CCMCLAPM	Notice Of Hearing RE: Motion for Order Shortening Time for Briefing and Hearing on Plaintiffs Motion in Limine NO. 13 12.9.14 @ 1:30 PM
12/2/2014	OPPO	CCMCLAPM	Zilog Incs Opposition to Plaintiffs Motion in Limine NO. 12 RE: Zilogs [Allegedly] Improperly Withheld Meeting Minutes
	DECL	CCMCLAPM	Declaration of Gerald T Husch in Opposition to Plaintiffs Motion in Limine NO. 12 RE: Zilogs [Allegedly] Improperly Withheld Meeting Minutes
			Document sealed
12/3/2014	OPPO	TCLAFFSD	Zilog Inc's Opposition To Plaintiff's Motion In Limine No 13 To Preclude Jointly Retained Defense Expert Dennis Reinstein's [Allegedly] Untimely Disclosed Opinions
	DECL	TCLAFFSD	Declaration Of Dennis Reinstein, CPA/ABV, ASA, CVA, In Opposition To Plaintiff's Motion In Limine No 13 To Preclude Jointly Retained Defense Expert Dennis Reinstein's Untimely Disclosed Expert Opinions
	DECL	TCLAFFSD	Declaration Of Gerald T Husch In Opposition To Plaintiff's Motion In Limine No 13 To Preclude Jointly Retained Defense Expert Dennis Reinstein's Untimely Disclosed Expert Opinions
			Document sealed

Date	Code	User	Judge
12/4/2014	NOTS	CCVIDASL	Notice Of Service of Defendant Zilog Incs Supplemental Responses to Plaintiffs Seventh Set of Requests for Production
	MOTN	CCVIDASL	Zilog Incs Motion to File Under Seal
	OPPO	TCLAFFSD	Joinder With Zilog Inc's Opposition To ASI's Motion In Limine No 13
12/5/2014	OPPO	CCTHIEKJ	Joinder With Zilog, Inc.'s Opposition to ASI's Motion in Limine NO 12
	NOTC	CCMARTJD	Notice of Election of Remedies
	DECL	CCMARTJD	Fourth Declaration of Kennedy Luvai in Support of Motions in Limine
	RPLY	CCMARTJD	Reply in Support of Motion in Limine No 12 Re Zilogs Improperly Withheld Meeting Minutes
			Document sealed
	RPLY	CCMARTJD	Reply in Further Support of Motion in Limine No 13 to Preclude Jointly Retained Defense Expert
			Document sealed
	AFFD	CCMARTJD	Affidavit in Support of Motion in Limine No. 13 to Preclude Jointly Retained Defense
			Document sealed
12/8/2014	NOTS	CCRADTER	Notice Of Service
12/9/2014	DCHH	DCELLISJ	Hearing result for Motion in Limine scheduled on 12/09/2014 01:30 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Motion for Order Shortening Time for Briefing and Hearing on Plaintiffs Motion in Limine NO> 13 LESS THAN 200 pages
12/11/2014	NOTD	CCTHIEKJ	Notice Of Deposition of William Tiffany
	NOTD	CCTHIEKJ	Notice Of Deposition of David Roberts
	NOTD	CCTHIEKJ	Notice Of Deposition of Gyle Yearsley
	NOTD	CCTHIEKJ	Notice Of Deposition of Dennis Reinstein, CPA/ABV. ASA, CVA
	NOTD	CCTHIEKJ	Notice Of Rule 30(b)(6) Deposition of Defendant Zilog Inc
12/12/2014	AMEN	CCRADTER	Amended Notice of Deposition of David Roberts
	AMEN	CCRADTER	Amended Notice of Deposition of Gyle Yearsley
	NOTS	CCMARTJD	Notice Of Service
12/15/2014	AMEN	CCHEATJL	Amended Notice Of Deposition Of Dennis Reinstein, CPA/ABV,ASA, CVA
	AMEN	CCHEATJL	Second Amended Notice Of Deposition Of David Roberts
	AMEN	CCHEATJL	Second Amended Notice Of Deposition Of Gyle Yearsley

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
12/18/2014	MISC	CCWEEKKG	Sage Defendant's Proposed Jury Instructions (Dirty Copy) Thomas F. Neville
	MISC	CCWEEKKG	Sage Defendant's Proposed Jury Instructions Thomas F. Neville
	NOTC	CCSCOTDL	Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog Inc Thomas F. Neville
	NOTC	CCSCOTDL	Second Amended Notice of Deposition of William Tiffany Thomas F. Neville
	NOTC	CCSCOTDL	Third Amended Notice of Deposition of David Roberts Thomas F. Neville
	NOTC	CCSCOTDL	Third Amended Notice of Deposition of Gyle Yearsley Thomas F. Neville
12/19/2014	AFOS	TCHEISLA	Affidavit Of Service (12-16-2014) Thomas F. Neville
	NOTS	CCMARTJD	(2) Notice Of Service Thomas F. Neville
12/22/2014	DECL	TCMEREKV	Declaration Of Kennedy K. Luvai In Support Of Plaintiff's Supplemental Memorandum In Further Support Of Its Motion In Limine NO. 5 RE: Quantum Meruit And Unjust Enrichment Counterclaims Thomas F. Neville
	NOTS	TCMEREKV	Notice Of Service Thomas F. Neville
	ACCP	TCMEREKV	Acceptance Of Service 12.22.14 Thomas F. Neville
	MEMO	TCMEREKV	Supplemental Memorandum In Further Support Of Plaintiff's Motion In Limine NO. 5 RE: Quantum Meruit And Unjust Enrichment Counterclaims Thomas F. Neville
	MISC	TCMEREKV	Defendant Zilog's Requested Jury Instructions Thomas F. Neville
	WITN	TCMEREKV	Defendant Zilog's List Of Witnesses For Trial Thomas F. Neville
12/23/2014	MOTN	DCELLISJ	Zilog's Motion to Strike The Third Supplemental Export Report of Stephen Holland Thomas F. Neville
	NOTS	CCTHIEKJ	Notice Of Service Thomas F. Neville
	DCHH	DCELLISJ	Hearing result for Pretrial Conference scheduled on 12/23/2014 01:30 PM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: LESS THAN 150 pages Thomas F. Neville
	MEMO	CCMARTJD	Supplemental Memorandum in Support of Motion in Limine No 11 Thomas F. Neville
	DECL	CCMARTJD	Document sealed Declaration of Kennedy Luvai in Support of Memorandum Thomas F. Neville
	MOTN	TCHEISLA	Document sealed Zilog, Inc.'s Motion to Strike the Third Supplemental Expert Report of Stephen Holland Thomas F. Neville
12/24/2014	WITN	CCSCOTDL	Plaintiff American Semiconductor Inc's Witness List Thomas F. Neville

Date	Code	User	Judge
12/24/2014	EXLT	CCSCOTDL	Plaintiff American Semiconductor Inc's Exhibit List
	JUIP	CCSCOTDL	Plaintiff American Semiconductor Inc's Requested Jury Instructions
12/29/2014	MEMO	CCHEATJL	Memorandum In Response To Plaintiff's Supplemental Preemption Agrument
	OPPO	CCSCOTDL	Plaintiffs Opposition to Zilog Inc's Motion to Strike the Supplemental Report of Stephen Holland
	MISC	CCVIDASL	Plaintiff American Semiconductor Incs List of Deposition Designations for Use at Trial
12/30/2014	MISC	CCRADTER	Supplement to Plaintiff American Semiconductor, Inc.'s Requested Jury Instructions
	MISC	CCRADTER	Plaintiff American Semiconductor, Inc.'s Amended Exhibit List
	NOTC	CCRADTER	Plaintiff's Notice to Appear at Trial (David Roberts)
	NOTC	CCRADTER	Plaintiff's Notice to Appear at Trial (David Staab)
	NOTC	CCRADTER	Plaintiff's Notice to Appear at Trial (William Tiffany)
	NOTC	CCRADTER	Plaintiff's Notice to Appear at Trial (Gyle Yearsley)
12/31/2014	MEMO	CCMARTJD	Memorandum re Copyright Preemption Issues
	DECL	CCMARTJD	Declaration of Kennedy Luvai in Support of Response to Memorandum re Copyright Preemption Issues
1/2/2015	MISC	CCBARRSA	Proposed Joint Statement of the Case
	OBJT	CCMARTJD	Objections and Counter Designations to List of Deposition Designations for Use at Trial
	MOTN	TCLAFFSD	Zilog's Motion To Quash Trial Subpoena To David Staab
	DECL	TCLAFFSD	Declaration of Andrea J. Rosholt In Support Of Zilog's Motion To Quash Trial Subpoena To David Staab
	MEMO	TCLAFFSD	Memorandum In Support of Zilog's Motion To Quash Trial Subpoena To David Staab
	BREF	TCLAFFSD	Zilog, Inc's Trial Brief
	NOTC	CCRADTER	Notice of Joinder With Zilog, Inc.'s Objections and Counter-Designations to Plaintiff American Semiconductor, Inc.'s List of Deposition Designations for Use at Trial
1/5/2015	AMEN	CCRADTER	Amended and Substitute Memorandum in Support of Zilog's Motion to Quash Trial Subpoena to David Staab



Date	Code	User	Judge
1/5/2015	NOTC	CCRADTER	Defendant Zilog, Inc's Notice of Errata Regarding its Objections and Counter-Designations to Plaintiff American Semiconductor, Inc's List of Deposition Designations for Use at Trial Thomas F. Neville
	MISC	CCRADTER	Supplement to Plaintiff American Semiconductor, Inc's Amended Exhibit List Thomas F. Neville
	DECL	CCRADTER	Declaration of Kennedy K Luvai in Opposition to Zilog's Motion to Quash Trial Subpoena to David Staab Thomas F. Neville
	JTST	DCELLISJ	Jury Trial Started Day 1 REPORTER: SUE WOLF LESS THAN 400 Pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 01/06/2015 09:00 AM) Day 2 Jury Trial Thomas F. Neville
1/6/2015	DCHH	DCELLISJ	Hearing result for Jury Trial scheduled on 01/06/2015 09:00 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Day 2 Jury Trial LESS THAN 400 pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 01/07/2015 09:00 AM) Day 3 Jury Trial Thomas F. Neville
1/7/2015	DCHH	DCELLISJ	Hearing result for Jury Trial scheduled on 01/07/2015 09:00 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Day 3 Jury Trial LESS THAN 350 pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 01/08/2015 09:30 AM) Jury Trial Day 4 Thomas F. Neville
	MOTN	TCLAFFSD	Motion Re: Testimony of David Staab At Trial As Part Of Its Case-In-Chief Thomas F. Neville
1/8/2015	DCHH	DCELLISJ	Hearing result for Jury Trial scheduled on 01/08/2015 09:30 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Jury Trial Day 4 LESS THAN 350 pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 01/09/2015 09:00 AM) Day 5 jury trial - Continued to 1/10/15 (Saturday) for Day 6 Jury Trial Thomas F. Neville
1/9/2015	DCHH	DCELLISJ	Hearing result for Jury Trial scheduled on 01/09/2015 09:00 AM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: Day 5 jury trial Less than 350 pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 01/12/2015 09:00 AM) Day7 jury trial Thomas F. Neville

Date	Code	User	Judge
1/10/2015	HRHD	DCELLISJ	Jury Trial day 6 Reporter: Sue Wolf PAGES: Less than 250 Thomas F. Neville
1/12/2015	DCHH	DCELLISJ	Hearing result for Jury Trial scheduled on 01/12/2015 09:00 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Day7 jury trial 250 pages Thomas F. Neville
1/13/2015	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 01/13/2015 09:00 AM) Day 8 jury trial Thomas F. Neville
	DCHH	DCELLISJ	Hearing result for Jury Trial scheduled on 01/13/2015 09:00 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Day 8 jury trial Less 350 pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 01/14/2015 09:00 AM) Jury Trial day 9 Thomas F. Neville
1/14/2015	DCHH	DCELLISJ	Hearing result for Jury Trial scheduled on 01/14/2015 09:00 AM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: Jury Trial day 9 LESS THAN 150 Pages Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 01/15/2015 09:00 AM) Jury Trial Day 10 Thomas F. Neville
	MISC	TCLAFFSD	Second Supplement To Plaintiff American Semiconductor Inc's Requested Jury Instructions Thomas F. Neville
1/15/2015	DCHH	DCELLISJ	Hearing result for Jury Trial scheduled on 01/15/2015 09:00 AM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: Jury Trial Day 10 Less than 250 Thomas F. Neville
	HRSC	DCELLISJ	Hearing Scheduled (Jury Trial 01/16/2015 09:00 AM) Jury Trial Day 11 Thomas F. Neville
1/16/2015	DCHH	DCELLISJ	Hearing result for Jury Trial scheduled on 01/16/2015 09:00 AM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: Jury Trial Day 11 Less than 100 page: Thomas F. Neville
	JUIS	DCELLISJ	Jury Instructions filed Thomas F. Neville
	VERD	DCELLISJ	Special Verdict Form Filed Thomas F. Neville
1/21/2015	CDIS	DCELLISJ	Civil Disposition entered for: Roberts, David, Defendant; Sage Silicon Solutions Llc, Defendant; Tiffany, William, Defendant; Yearsley, Gyle, Defendant; Zilog Inc, Defendant; American Semiconductor Inc, Plaintiff. Filing date: 1/21/2015 JUDGMENT Thomas F. Neville
	STAT	DCELLISJ	STATUS CHANGED: Closed Thomas F. Neville

Date	Code	User	Judge
1/30/2015	HRSC	DCELLISJ	Hearing Scheduled (Status Conference 01/30/2015 01:30 PM)
	STAT	DCELLISJ	STATUS CHANGED: Closed pending clerk action
	DCHH	DCELLISJ	Hearing result for Status Conference scheduled on 01/30/2015 01:30 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 100 pages
2/4/2015	AFFD	CCVIDASL	Affidavit of Gary L Cooper in Support of Costs and Attorney Fees
	MEMO	CCVIDASL	Sage Defendants Memorandum in Support of Award of Costs and Attorney Fees
	MOTN	TCLAFFSD	Plaintiff's Motion To Amend Or Clarify The Verdict, Or In The Alternative, Amend The Judgment
	MOTN	TCLAFFSD	Plaintiff's Motion For Leave To Contact Jurors
	MOTN	TCLAFFSD	American Semiconductor, Inc's Motion For Costs And Fees Against The Sage Defendants
	AFSM	TCLAFFSD	Affidavit Of Brian Julian In Support Of American Semiconductor, Inc's Motion For Costs And Fees Against The Sage Defendants
	MEMO	TCLAFFSD	Document sealed Memorandum In Support of American Semiconductor, Inc's Motion For Costs And Fees Against The Sage Defendants
	AFSM	TCLAFFSD	Affidavit Of John N Zarian In Support Of American Semiconductor, Inc's Motion For Attorney Fees & Costs Against The Sage Defendants
	MECO	TCLAFFSD	Document sealed American Semiconductor, Inc's Memorandum of Cost & Fees
	MOTN	TCLAFFSD	Document sealed Zilog Inc's Motion For Attorney Fees & Costs
	DECL	TCLAFFSD	Declaration Of Gerald T Husch In Support of Zilog Inc's Motion For Attorney Fees & Costs Filed
	MEMO	TCLAFFSD	Document sealed Memorandum In Support Of Zilog Inc's Motion For Attorney Fees & Costs
	MEMO	TCLAFFSD	Document sealed Zilog Inc's Memorandum Of Fees & Costs
	DECL	TCLAFFSD	Declaration of Cheryl L Dunham
	MOTN	TCLAFFSD	Zilog Inc's Motion For Leave To File Overlength Brief

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
2/4/2015	MOTN	TCLAFFSD	Zilog Inc's Motion For Relief From Protective Order
	DECL	TCLAFFSD	Declaration Of David R Staab In Support of Zilog's Motion For Relief From Protective Order
	MEMO	CCHOLDKJ	Zilog, Inc's Memorandum In Support of Motion for Relief from Protective Order
	DECL	CCHOLDKJ	Declaration of Monte J Dalrymple in Support of Motion for Relief from Protective Order
	NOHG	CCHOLDKJ	Zilog, Inc's Notice Of Hearing (2.19.15 @ 1:30pm)
	HRSC	CCHOLDKJ	Hearing Scheduled (Motion 02/19/2015 01:30 PM)
2/5/2015	MOTN	CCRADTER	Joinder With Zilog, Inc.'s Motion for Attorney Fees and Costs
2/9/2015	REQU	TCLAFFSD	American Semiconductor, Inc's Request For Clarification Of Deadline To Object To Defendants' Motions For Fees & Costs (And Request For Telephonic Conference)
2/12/2015	MOTN	TCMEREKV	American Semidoncutor, Inc.'s Motion To Continue Hearing On Motions For Fees And Costs
	MEMO	TCMEREKV	Memorandum In Support Of American Semiconductor, Inc.'s Motion To Continue Hearing On Motions For Fees And Costs
	OPPO	TCMEREKV	American Semiconductor, Inc.'s Opposition To Zilog's, Inc.'s Motion For Relief From Protective Order
	DECL	TCMEREKV	Declaration Of Doug Hackler In Opposition To Zilog, Inc.'s Motion For Relief From Protective Order
			Document sealed
2/13/2015	MOTN	CCHEATJL	Sage Defendants' Motion To Disallow ASI's Request For Costs And Attorney Fees
	AFFD	CCHEATJL	Affidavit Of Donald J. Farley
	MEMO	CCHEATJL	Sage Defendants Memorandum In Oppopsition To ASI's Request For Costa And Attorney Fees
	MEMO	CCHEATJL	Sag Defendants Memorandum In Opposition To ASI's Motion Fro Leave To Contact Jurors
	MEMO	CCHEATJL	Sage Defendants Memorandum In Opposition To ASI's Motion To Amend Or Clarify The Verdict, Or In The Alternate, Amend The Judgment
	MEMO	CCMYERHK	Sage Defendants' Memorandum In Opposition To ASI's Motion To Continue Hearing
2/17/2015	DECL	TCLAFFSD	Declaration Of Gerald T. Husch In Opposition To ASI's Motion To Continue Hearing

Date	Code	User	Judge
2/17/2015	MEMO	TCLAFFSD	Zilog Inc's Memorandum In Opposition To ASI's Motion To Continue Hearing; Joinder In Sage Defendants' Memorandum In Opposition To ASI's Motion To Continue Hearing Document sealed Thomas F. Neville
	REPL	TCLAFFSD	Plaintiff's Reply In Support of Its Motion To Amend Or Clarify The Verdict, Or In The Alternative, Amend The Judgment Thomas F. Neville
	REPL	TCLAFFSD	Reply In Further Support Of American Semiconductor, Inc's Motion To Continue Hearing On Motions For Fees & Costs Pursuant To Rules 54 & 7 Thomas F. Neville
	REPL	TCLAFFSD	Reply In Support Of Its Motion For Leave To Contact Jurors Thomas F. Neville
	AFFD	TCLAFFSD	Affidavit Of John N. Zarian In Support Of Plaintiff's Reply In Support of Its Motion For Leave To Contact Jurors Thomas F. Neville
2/18/2015	AFFD	CCMARTJD	Affidavit of John Oborn re Additional Costs and Fees Thomas F. Neville
	OBJE	CCRADTER	American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs Thomas F. Neville
	DECL	CCRADTER	Document sealed Declaration of Doug Hackler in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs Thomas F. Neville
	DECL	CCRADTER	Document sealed Declaration of Dale Wilson in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs Thomas F. Neville
	DECL	CCRADTER	Document sealed Declaration of Stephen D Holland in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs Thomas F. Neville
	DECL	CCRADTER	Document sealed Declaration of Kennedy K Luvai in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs Thomas F. Neville
	DECL	CCRADTER	Document sealed Declaration of John N Zarian in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs Thomas F. Neville
			Document sealed

Date	Code	User	Judge
2/18/2015	MEMO	CCRADTER	Memorandum No.1 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs RE: Rule 11 Document sealed
	MEMO	CCRADTER	Memorandum No.2 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs RE: Rule 37
	MEMO	CCRADTER	Memorandum No.3 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs RE: Rule 41
	MEMO	CCRADTER	Memorandum No.4 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs RE: I.C. 12-121
	MEMO	CCRADTER	Memorandum No.5 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs RE: I.C. 12-120(3)
	MEMO	CCRADTER	Memorandum No.6 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs RE: Court's Inherent Authority to Sanction Document sealed
2/19/2015	DECL	CCBARRSA	Supplemental Declaration of Gerald T. Husch in Support of Motion for Attorney Fees and Costs
	DCHH	DCELLISJ	Hearing result for Motion scheduled on 02/19/2015 01:30 PM: District Court Hearing Held Court Reporter: SUE WOLF Number of Transcript Pages for this hearing estimated: LESS THAN 100 pages
	OBJT	CCMARTJD	Objection to Motion for Attorneys Fees and Costs
	MOTN	CCMARTJD	Motion to Exceed Page Limit Re Memoranda in Support of Objection and Motion to Disallow Zilog
	NOTC	CCMARTJD	Notice of Intent to Oppose the Sage Defendants Motion to Disallow American Semiconductors incs Request for Costs and Attorneys Fees
2/20/2015	MOTN	TCLAFFSD	American Semiconductor, Inc.'s Motion To Disallow Costs In Opposition To Sage Defendants' Memorandum In Support of An Award of Costs & Attorney Fees
	MEMO	TCLAFFSD	Combined Memorandum In Support of : (1) American Semiconductor, Inc's Motion To Disallow Costs; And (2) American Semiconductor, Inc's Opposition To Sage Defendants' Motion To Disallow Costs

Date	Code	User	Judge
2/20/2015	NOTC	CCHOLDKJ	Notice of Errata Regarding Zilog Inc Memorandum of Fees and Costs Thomas F. Neville
	MEMO	CCHOLDKJ	Zilog Inc.'s Post Hearing Memorandum Regarding Pending Motions Thomas F. Neville
	DECL	CCHOLDKJ	Declaration of David R Staab in Support of Zilog Inc.'s Post-Hearing Memorandum Regarding Pending Motions Thomas F. Neville
	DECL	CCHOLDKJ	Declaration of Gerald T Husch in Support of Zilog Inc.'s Post-Hearing Memorandum Regarding Pending Motions Thomas F. Neville
	DECL	CCHOLDKJ	Document sealed Declaration of Monte J Dalrymple in Support of Zilog Inc.'s Post-Hearing Memorandum Regarding Pending Motions Thomas F. Neville
	AFFD	CCRADTER	Document sealed Affidavit of Gary L Cooper in Support of Sanctions Against Asi Thomas F. Neville
2/23/2015	MEMO	DCELLISJ	Memorandum Decision and Order RE: Attorney Fees and Costs Thomas F. Neville
2/25/2015	AMJD	DCELLISJ	Amended Judgment Thomas F. Neville
2/27/2015	NOTA	CCJOHNLE	NOTICE OF APPEAL Thomas F. Neville
	APSC	CCJOHNLE	Appealed To The Supreme Court Thomas F. Neville
3/13/2015	RQST	CCMURPST	Request for Additional Record Thomas F. Neville
	REQU	CCGARCOS	Zilog, Inc.'s Request for Additional Transcript and Record on Appeal Thomas F. Neville
5/4/2015	NOTH	CCMYERHK	Notice Of Hearing Thomas F. Neville
	HRSC	CCMYERHK	Hearing Scheduled (Hearing Scheduled 06/19/2015 11:00 AM) Motion For Entry Of Satisfaction Of Judgment George Carey
	MOTN	CCGRANTR	Motion for Entry of Satisfaction of Judgment Thomas F. Neville
	AFFD	CCGRANTR	Affidavit of John D Oborn Thomas F. Neville
5/12/2015	AMEN	CCMARTJD	Amended Notice of Hearing re Motion for Entry of Satisfaction of Judgment (7.1.15@1:30pm) Thomas F. Neville
	HRSC	CCMARTJD	Hearing Scheduled (Hearing Scheduled 07/01/2015 01:30 PM) Motion for Entry of Satisfaction of Judgment Thomas F. Neville
5/21/2015	CHGA	DCELLISJ	Judge Change: Administrative Jonathan Medema
	HRVC	DCELLISJ	Hearing result for Hearing Scheduled scheduled on 06/19/2015 01:30 PM: Hearing Vacated Motion for Entry of Satisfaction of Judgment Thomas F. Neville
5/27/2015	SATJ	CCGARCOS	Partial Satisfaction Of Amended Judgment (Paragraph ONLY) Jonathan Medema
6/24/2015	DECL	CCBOYIDR	Declaration of Kennedy K Luvai in Opposition to Motion for Entry of Satisfaction of Judgment Jonathan Medema

Case: CV-OC-2011-23344 Current Judge: Thomas F. Neville  
 American Semiconductor Inc vs. Sage Silicon Solutions Llc, etal.

Date	Code	User	Judge
6/24/2015	MEMO	CCBOYIDR	American Semiconductor, Inc's Memorandum in Opposition to Motion for Entry of Satisfaction of Judgment
6/29/2015	HRVC	DCELLISJ	Hearing result for Hearing Scheduled scheduled on 07/01/2015 01:30 PM: Hearing Vacated Motion For Entry Of Satisfaction Of Judgment
	ORDR	TCWEGEKE	Order to Allow Substitution of Copy for Original
7/1/2015	ORDR	DCELLISJ	Order of recusal
7/2/2015	MISC	DCELLISJ	Directive Reassigning Csa to Senior District Judge
	CHGA	DCELLISJ	Judge Change: Administrative
7/16/2015	SATJ	CCGARCOS	Amended Partial Satisfaction of Amended Judgment (Paragraph 5 ONLY)
7/17/2015	STIP	CCMARTJD	Stipulation Regarding Status Pending Appeal
7/22/2015	NOTC	CCHYSEKB	Notice of Withdrawal of Motion for Entry of Satisfaction of Judgment
8/4/2015	STIP	CCGARCOS	Stipulation by ASI and Sage Defendants to Stay Execution the Judgment and Amended Judgment
11/12/2015	NOTC	TCWEGEKE	(3) Notice of Transcript Lodged - Supreme Court No. 43011



ORIGINAL

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CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDA K  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I - X,

Defendants.

Case No. **CV 0C 1123344**

COMPLAINT AND DEMAND FOR  
JURY TRIAL

Fee Category: A

Fee: \$88.00

COMES NOW the above-named Plaintiff, American Semiconductor, Inc., an  
Idaho Corporation, by and through its attorneys of record, Anderson, Julian and Hull,  
LLP, and hereby claims as follows:

## **PARTIES**

1. That at all times relevant hereto, American Semiconductor, Inc. was and is a Corporation incorporated in the State of Idaho, with its principal place of business in Boise, Ada County, Idaho.

2. Based on information and belief, Sage Silicon Solutions, LLC was and continues to be a limited liability company, organized on or around January 28, 2010, with its principal place of business in Meridian, Ada County, Idaho.

3. Based on information and belief, David A. Roberts was and is a private individual with his primary residence located in Meridian, Ada County, Idaho.

4. Based on information and belief, Gyle D. Yearsley was and is a private individual with his primary residence located in Boise, Ada County, Idaho.

5. Based on information and belief, William Tiffany was and is a private individual with his primary residence located in Eagle, Ada County, Idaho.

6. Based on information and belief, Russell Lloyd was and is a private individual with his primary residence located in Middleton, Canyon County, Idaho.

7. Based on information and belief, Evelyn Perryman was and is a private individual with her primary residence located in Caldwell, Canyon County, Idaho.

8. Based on information and belief, Zilog, Inc. was and is a corporation incorporated in the state of Delaware, with its principal place of business located in Milpitas, California.

9. Based on information and belief, Zilog, Inc. has offices located in Meridian, Ada County, Idaho.

10. Based on information and belief, Does I-X are persons or entities whose identities are unknown, and who may be or are responsible or liable for the damages arising out of the facts alleged below.

#### **VENUE AND JURISDICTION**

11. Jurisdiction is appropriate over the claims set forth in this Complaint pursuant to Idaho Code § 1-705 and pursuant to contract.

12. Personal jurisdiction is appropriate over the Defendants identified in this Complaint pursuant to Idaho Code § 5-514 and pursuant to contract.

13. Venue is appropriate in this Court over the claims and Defendants set forth in this Complaint pursuant to Idaho Code 5-404 and pursuant to contract.

14. The amount in controversy exceeds \$10,000.00.

#### **GENERAL ALLEGATIONS**

15. Prior to January 28, 2010, David Roberts, William Tiffany, Gyle Yearsley, and Russell Lloyd, were employed by Plaintiff American Semiconductor.

16. Beginning on or around April 12, 2009, Evelyn Perryman was employed by Plaintiff American Semiconductor.

17. As part of their employment relationship with American Semiconductor, each of David Roberts, William Tiffany, Gyle Yearsley, Russell Lloyd, and Evelyn Perryman (referred to hereinafter as the "individual Defendants") signed an Employee Confidentiality Agreement.

18. The Employee Confidentiality Agreement contained the following language:

## **2. Trade Secrets and Confidential Information.**

(a) Employee acknowledges that Employer's business and future success depend on the preservation of the trade secrets and other confidential information of Employer and its suppliers and customers (the "Secrets"). The Secrets include, without limiting the generality of the foregoing, research, development, production, existing and to-be-developed or acquired source codes, flow charts, product designs, market surveys, customer lists, business and financial information, product and marketing plans, personnel information, procedural and technical manuals and practices, servicing routines, and parts lists proprietary to Employer or its customers or suppliers. Employee agrees to protect and to preserve as confidential during and after the term of his/her employment all of the Secrets at any time known to Employee or in his/her possession or control (whether wholly or partially developed by Employee or provided to Employee, and whether embodied in a tangible medium or merely remembered).

...

**3. Disclosure of Inventions.** Employee will promptly disclose to Employer all inventions, improvements, designs, original works of authorship, formulas, processes, software programs, databases, mask works, and trade secrets (the "Inventions") that he/she has made or conceived or created, either alone or jointly with others, during the term of his/her employment, whether or not in the course of employment and whether or not such Inventions are patentable, copyrightable or protectable as trade secrets.

**4. Assignments of Inventions.** Employee agrees that all Inventions that (i) are developed using equipment, supplies, facilities, or trade secrets of Employer; (2) [sic] result from work performed by Employee for Employer; or (iii) relate to Employer's business or current or anticipated research and development, will be the sole and exclusive property of Employer, and Employee hereby irrevocably assigns all rights in such Inventions to Employer. Employee will sign any assignment or other documents as requested by Employer to evidence such assignment during or after the term of his/her employment by Employer, and will otherwise assist Employer in protective it [sic] rights in such Inventions as requested by Employer.

...

7. **Duty Not to Compete.** Employee understands that his/her employment requires his/her undivided attention and effort during normal business hours. While employed, Employee will not, without Employer's express written consent, provide services to, or assist in any manner, any business or third party which competes with the current or planned business of Employer.

19. On or around January 28, 2010, the individual Defendants, acting as either members or managers, formed Sage Silicon Solutions, LLC (hereinafter referred to as "Sage").

20. The Certificate of Organization for Sage as a limited liability company was filed with the Idaho Secretary of State on or around January 28, 2010.

21. Each of the individual Defendants were listed on the Certificate of Organization as either as member or manager.

22. On January 28, 2010, David Roberts, William Tiffany, Gyle Yearsley, and Russell Lloyd were still employed by American Semiconductor. Each of this Defendants had signed the Employee Confidentiality Agreement prior to this date.

23. On or around April 12, 2010, Evelyn Perryman signed an Employee Confidentiality Agreement, despite the fact that she was a member or manager of Sage.

24. Based on information and belief, before or after Sage was organized, a website was created for Sage. The website was freely available, and accessible by anyone with an internet connection.

25. The Sage website contained the following language:

Sage Silicon Solutions, Inc. is your complete silicon design resource from concept to fabrication. We offer silicon design services that enable you to realize your product in silicon.

26. Prior to the creation of Sage's website, American Semiconductor's website contained the following language:

American Semiconductor, Inc. is your complete silicon fabrication source from concept to fabrication. We offer a complete suite of services that enable you to realize your product in silicon.

27. The Sage website also included the following language:

Sage Silicon Solutions, Inc. is a team of ex-Zilog engineers who bring their experience in designing industry leading microcontrollers to your project. Our design background spans the complete needs for ASIC or SOC design from custom microprocessor cores and peripherals to on-chip memory and analog/mixed signal needs. In cooperation with American Semiconductor, Inc., we offer a portfolio of IP that is silicon proven.

28. At no point did American Semiconductor give the individual Defendants permission to start a business, limited liability company, or other corporate entity.

29. At no point did American Semiconductor give the individual Defendants or Sage permission to utilize language on Sage's website which is identical to the language utilized on American Semiconductor's website.

30. At no point did American Semiconductor give the individual Defendants or Sage permission to indicate on Sage's website that Sage was working "in cooperation with American Semiconductor Inc."

31. At no point did American Semiconductor release the individual Defendants from their obligations under the Employee Confidentiality Agreements, nor did American Semiconductor waive its rights under such agreement.

32. Based on information and belief, at some point after January, 2010,

Sage and the individual Defendants began providing design and other services to entities and third-parties, other than American Semiconductor.

33. One of those third-parties to whom Sage and the individual Defendants provided design and other services is Zilog, Inc. (hereinafter referred to as "Zilog").

34. Based on information and belief, Zilog, and/or its employees, agents, or representatives were aware, at the time it requested services from Sage, that the individual Defendants were still employed by American Semiconductor.

35. American Semiconductor discovered the existence of Sage on or around September 22, 2011.

36. Prior to September 22, 2011, American Semiconductor had no knowledge that the individual Defendants had formed Sage, or that the individual Defendants and/or Sage were providing services to Zilog.

37. Based on information and belief, the individual Defendants utilized American Semiconductor equipment, computers, and property in providing services to Zilog and/or other third parties.

38. Based on information and belief, the individual Defendants utilized American Semiconductor equipment, computers, and property in conducting Sage business.

39. Based on information and belief, the individual Defendants utilized trade secrets (as defined by the Idaho Trade Secret Act, Idaho Code § 48-801) and contractual "Secrets" and "Inventions" (as defined in the Employee Confidentiality

Agreement), owned by or assigned to American Semiconductor, in providing services to Zilog and/or other third parties.

40. On or about September 22, 2011, after American Semiconductor discovered the existence of Sage, and that the individual Defendants and Sage were providing services to Zilog, American Semiconductor demanded of Sage and the individual Defendants that they provide an assignment of all design work provided to Zilog.

41. Based on information and belief, Sage sent invoices to Zilog for services provided in the amount of at least \$124,181.75.

42. At no time has American Semiconductor received any compensation for the services provided by the individual Defendants and/or Sage to Zilog and/or other third parties.

43. At no time has American Semiconductor received from Sage or the individual Defendants any assignment of design work provided to Zilog and/or other third parties.

44. On September 27, 2011, American Semiconductor terminated David Roberts', Gyle Yearsley's and William Tiffany's employment relationship with American Semiconductor.

45. Russell Lloyd and Evelyn Perryman were given the option to remain as American Semiconductor employees on the condition they resigned their positions with Sage.

46. Mr. Lloyd chose to resign from Sage and retain his employment with



American Semiconductor. Mr. Lloyd is a current employee of American Semiconductor.

47. Evelyn Perryman resigned from American Semiconductor on November 1, 2011.

48. Based on information and belief, design work provided by Sage and/or the individual Defendants to Zilog is incorporated into Zilog's products.

49. The actions of the individual Defendants and Sage has hindered, impeded, and interfered with American Semiconductor's ability to offer its services in the open market, including obtaining service contracts with Zilog.

50. The individual Defendants had a duty to perform work for their employer American Semiconductor, instead of competing against it.

51. The actions of the individual Defendants and Sage has resulted in lost earnings and profits to American Semiconductor as a result the individual Defendants spending time, resources, and energy working on services as part of Sage, as opposed to working on projects for their employer, American Semiconductor.

52. The actions of Zilog have resulted in lost earnings and profits to American Semiconductor as a result of Zilog using American Semiconductor design resources, design knowledge and designs without approval from American Semiconductor.

53. The actions of Zilog have resulted in American Semiconductor design fixes, design knowledge and designs integrated into Zilog products without

approval from American Semiconductor.

54. Based on information and belief, Zilog has not made payment of all amounts invoiced related to services provided by Sage and the individual Defendants.

**FIRST CAUSE OF ACTION:**

**BREACH OF CONTRACT**

**(against the individual Defendants)**

55. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

56. While employed by American Semiconductor, each of the individual Defendants signed an Employee Confidentiality Agreement.

57. The Employee Confidentiality Agreement was supported by valid consideration including, without limitation, the continued at-will employment of the individual Defendants.

58. Thus, each Employee Confidentiality Agreement was a valid contract.

59. While employed by American Semiconductor, each of the individual Defendants was a key employee.

60. Without limitation, David Roberts was a manager at American Semiconductor with a high level of knowledge due to his exposure to American Semiconductor's technologies, trade secrets, intellectual property, business plans and procedures, customers, and other protected interests. Gyle Yearsley, Russell Lloyd, and William Tiffany were engineers, and Evelyn Perryman was a technician,

all of whom had a high level of knowledge due to their exposure to American Semiconductor's technologies, trade secrets, intellectual property, methods of operation, and other protected interests.

61. Each of these employees had the ability to harm or threaten American Semiconductor's legitimate business interests.

62. Pursuant to the Employee Confidentiality Agreement, each individual Defendant agreed to not compete against American Semiconductor.

63. Pursuant to the Employee Confidentiality Agreement, each individual Defendant agreed to assign any "Inventions" related "to Employer's business or current or anticipated research and development."

64. Each of the individual Defendants breached the Employee Confidentiality Agreement.

65. Without limitation, each individual Defendant competed against American Semiconductor by forming Sage and providing services to a third party.

66. Further, each individual Defendant failed to assign any and all "Inventions", which included any design work or other similar work provided to Zilog or other third parties.

67. American Semiconductor has been damaged by the individual Defendant's conduct, and the individual Defendant's breach is the proximate and direct cause of Plaintiff's injury.

68. The individual Defendants' conduct was willful, wanton, malicious, grossly negligent and/or outrageous. It was an extreme deviation from the

standards of reasonable conduct, and was done with knowledge of its likely effect on Plaintiff.

**SECOND CAUSE OF ACTION:**

**BREACH OF FIDUCIARY DUTY/ DUTY OF LOYALTY**

**(against the individual Defendants)**

69. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

70. As employees, key employees and managers employed by American Semiconductor, the individual Defendants owed American Semiconductor a fiduciary duty and/or a duty of loyalty.

71. Based on the individual Defendants' actions in forming Sage, a business entity which competed with American Semiconductor, it is apparent that while still employed by American Semiconductor, the individual Defendants knowingly and actively competed with their employer, including soliciting and providing services to American Semiconductor's potential client Zilog, and soliciting services to American Semiconductor's other potential clients.

72. Further, the individual Defendants received payments from Zilog for services provided, which should have been directed and/or assigned to American Semiconductor.

73. By engaging in such disloyal conduct, the individual Defendants breached their duties owed to American Semiconductor.

74. American Semiconductor has been damaged by this breach of duty,

and the individual Defendant's breach is the direct and proximate cause of American Semiconductor's injuries.

**THIRD CAUSE OF ACTION:**

**BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

**(against the individual Defendants and Sage)**

75. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

76. Under Idaho law, every contract is deemed to have an implied covenant of good faith and fair dealing.

77. Pursuant to the implied covenant of good faith and fair dealing, a party to a contract is not permitted to nullify or significantly impair the benefits that the other party reasonably expects to receive under the contract.

78. The conduct of the individual Defendants and Sage deprived American Semiconductor of the benefits it reasonably expected to receive under the Employee Confidentiality Agreement, including any amounts paid by Zilog or "Inventions" which were to be assigned to American Semiconductor.

79. American Semiconductor has been damaged by this breach, and the breach is the direct and proximate cause of American Semiconductor's injuries.

**FOURTH CAUSE OF ACTION:**

**TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE AND CONTRACT**

**(against the individual Defendants and Sage)**

80. Plaintiff realleges and hereby incorporates the allegations made in the

foregoing paragraphs as if set forth herein in full.

81. The individual Defendants and Sage were aware of the existence of the Employee Confidentiality Agreements between the individual Defendants and American Semiconductor.

82. The individual Defendants and Sage were aware that American Semiconductor and Sage would be seeking to provide similar or identical services to third parties, including Zilog.

83. By forming Sage and providing services to third-parties such as Zilog, the individual Defendants tortiously interfered with American Semiconductor's prospective economic advantage, including depriving American Semiconductor of the opportunity to seek to provide services to Zilog.

84. Further, the individual Defendants and Sage tortiously interfered with the Employee Confidentiality Agreement by seeking to provide services to third-parties.

85. The individual Defendants and Sage were aware that American Semiconductor had, in the past, sought to provide services to Zilog, and would, in the future, continue to seek to provide services to Zilog and other third-parties.

86. American Semiconductor has been damaged by this conduct, and damages were directly and proximately caused by the individual Defendants' and Sage's tortious interference.

**FIFTH CAUSE OF ACTION:**

**IDAHO TRADE SECRET ACT VIOLATION, I.C. § 48-801, *et seq.***

**(against the individual Defendants and Sage)**

87. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

88. Based on information and belief, the individual Defendants, as employees of American Semiconductor, obtained American Semiconductor's trade secrets and/or other protectable interests and business model for design services as a result of their employment.

89. Based on information and belief, such trade secrets and/or other protectable interests were utilized in providing services to Zilog, in violation of the Idaho Trade Secret Act.

90. Such violation of the Idaho Trade Secret Act resulted in damages to American Semiconductor, or a benefit to the individual Defendants and Sage, in the amount of at least \$124,181.75. Plaintiff seek recovery of such damages in an amount to be proven at trial, disgorgement of the benefit received by the individual Defendants and Sage, and/or a reasonable royalty for the unauthorized use of American Semiconductor's trade secrets and/or other protectable interests.

91. Due to Sage's and the individual Defendants' malicious and willful conduct, American Semiconductor seeks exemplary damages not to exceed twice the amount awarded pursuant to the Idaho Trade Secret Act.

**SIXTH CAUSE OF ACTION:**

**IMPROPER APPROPRIATION OF AMERICAN SEMICONDUCTOR'S NAME**

**(against the individual Defendants and Sage)**

92. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

93. By falsely stating on Sage's website that it was working "in cooperation with American Semiconductor, Inc.", the individual Defendants and Sage improperly appropriated American Semiconductor's name for their own benefit.

94. Such action resulted in damages to American Semiconductor, including lost potential for obtaining service contracts with Zilog in the amount of at least \$124,181.75.

#### **SEVENTH CAUSE OF ACTION:**

##### **UNJUST ENRICHMENT**

**(against the individual Defendants and Sage)**

95. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

96. The individual Defendants have received a benefit from American Semiconductor, in the form of salary payments and benefits while the individual Defendants formed and operated Sage.

97. The individual Defendants accepted and appreciated this benefit.

98. It would be inequitable for the individual Defendants to retain the benefit of salary payments and benefits while the individual Defendants operated a business in direct competition with American Semiconductor.

99. Further, both the individual Defendants and Sage received a benefit



from utilizing American Semiconductor's trade secrets, in the form of payment for services from Zilog for such services.

100. The individual Defendants and Sage received and appreciated such benefits.

101. It would be inequitable for the individual Defendants and Sage to retain such benefit where such benefit was received in direct violation of the Employee Confidentiality Agreement, fiduciary duties and duties of loyalty, and Idaho statute.

102. The individual Defendants and Sage should be disgorged of the benefits that they've received.

103. American Semiconductor is entitled to recoup such disgorgement, as the individual Defendants and Sage received such benefit to American Semiconductor's detriment.

**EIGHTH CAUSE OF ACTION:**

**CONSUMER PROTECTION ACT VIOLATION**

**(against the individual Defendants and Sage)**

104. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

105. Sage and the individual Defendants included and incorporated American Semiconductor's name into Sage's website.

106. Sage and the individual Defendants further indicated that they worked "in cooperation with American Semiconductor, Inc."

107. American Semiconductor did not work in cooperation with Sage, nor did it ever give permission for its name to be used in Sage's website.

108. Such acts did or would cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of Sage and the individual Defendants' services, in violation of the Idaho Consumer Protection Act.

109. American Semiconductor has been damaged by this conduct, and requests all relief allowed under the Idaho Consumer Protection Act, including statutory damages and injunctive relief.

**NINTH CAUSE OF ACTION:**

**DECLARATORY RELIEF**

**(against the individual Defendants, Sage, and Zilog)**

110. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

111. Pursuant to Idaho Code § 10-1201, courts have the power to declare the rights, status, and other legal relations between parties.

112. A contract existed between the individual Defendants and American Semiconductor whereby all "Inventions" created by the individual Defendants during the term of their employment are assigned to American Semiconductor.

113. Based on information and belief, "Inventions", including design work created or prepared by the individual Defendants are included in Zilog's products.

114. Based on information and belief, the individual Defendants and/or Sage provided design and other services to Zilog pursuant to contract.

115. American Semiconductor is legally entitled to an assignment of rights in all "Inventions" incorporated into Zilog products which were prepared or created by the individual Defendants and/or Sage.

116. Further, pursuant to the Idaho Trade Secrets Act, American Semiconductor may be entitled to a reasonable royalty for all "Inventions" incorporated into Zilog products, as such "Inventions" include trade secrets or other protectable interests owned by American Semiconductor.

**TENTH CAUSE OF ACTION:**

**INJUNCTIVE RELIEF**

**(against the individual Defendants, Sage, and Zilog)**

117. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

118. Based on information and belief the individual Defendants and Sage continue to operate and provide services or advertisements for services to third parties.

119. Based on information and belief, Zilog continues to use products which incorporate "Inventions" and trade secrets belonging to American Semiconductor.

120. American Semiconductor seeks both preliminary and permanent injunctive relief preventing the individual Defendants and Sage to continue from operating or providing services or advertisements for services to third-parties which is in contravention of the Employee Confidentiality Agreement.

121. American Semiconductor seeks both preliminary and permanent injunctive relief preventing the individual Defendants, Sage, and Zilog from utilizing or disclosing American Semiconductor's "Inventions" or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such "Inventions" or trade secrets.

#### **RESERVATION OF RIGHTS AND NOTICE PLEADING**

122. As this is a notice pleading jurisdiction, Plaintiffs hereby give notice of the intent to include in this Complaint and to pursue any and all claims and causes of action which could justifiably be inferred based on the facts alleged and the specific causes of action pled.

123. Plaintiffs reserve the right to amend this Complaint to specifically include and identify any claims or causes of action which may be discovered through the course of discovery, including but not limited to Federal copyright violations and Federal and state trademark violations.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

- a. For damages, statutory damages, treble damages, in an amount to be proven at trial, but which exceeds \$10,000. Such damages include, but are not limited to, lost profits due to lost design capacity, costs of recruitment, hiring and training for replacement of terminated employees, lost income related to competition from Sage, loss of employee time while the individual Defendants were performing work for Sage instead of for American Semiconductor, etc.
- b. Disgorgement of any improperly received benefits, such as payments for services from Zilog, employee salaries and benefits, etc.
- c. Preliminary and permanent injunctive relief preventing the individual

Defendants and Sage to continue from operating or providing services or advertisements for services to third-parties which is in contravention of the Employee Confidentiality Agreement.

- d. Preliminary and permanent injunctive relief preventing the individual Defendants, Sage, and Zilog from utilizing or disclosing American Semiconductor's "Inventions" or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such "Inventions" or trade secrets.
- e. Declaratory relief determining the relationship between American Semiconductor, the individual Defendants, Sage, and Zilog, with respect to the Employee Confidentiality Agreement, and American Semiconductor's right to the "Inventions" and trade secrets utilized during the services provided to Zilog.
- f. Imposition of a constructive trust on all payments owed by Zilog or other third parties to Sage which remain unpaid, for the benefit of Plaintiff American Semiconductor.
- g. For any and all attorney fees and costs allowed, including pursuant to Idaho Code §§ 12-120, 12-121, 48-608, and 17 U.S.C. § 505.
- h. For an award of prejudgment interest, as allowed pursuant to Idaho Code § 28-22-104 or any other applicable code or rule.
- i. [Reserved]
- j. For any such other and further relief as this Court deems just and proper under the circumstances.

**PLAINTIFF DEMANDS TRIAL BY JURY AS TO ALL ISSUES.**

DATED this 2 day of December, 2011.

ANDERSON, JULIAN & HULL LLP

By Stephen A. H.  
Brian K. Julian, Of the Firm  
Attorneys for Plaintiff

THOMAS F NEVILLE

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Attorneys for Plaintiff

ORIGINAL

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 12:59

DEC 02 2011

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I - X,

Defendants.

Case No. **CV 00 1123344**

SUMMONS

**NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF: THE  
COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE  
UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.**

TO: **EVELYN PERRYMAN**  
**215 N. Georgia**  
**Caldwell, Idaho 83605**

You are hereby notified that in order to defend this lawsuit, appropriate written response must be filed with the above designated court within 20 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the plaintiff(s) in the Complaint.

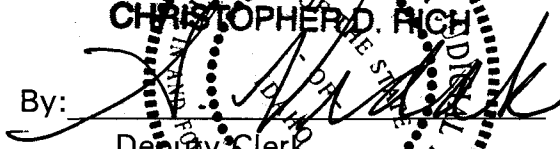
A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this 2 day of December, 2011.

CLERK OF THE DISTRICT COURT  
CHRISTOPHER D. FICH  
By:   
Deputy Clerk  
IDAHO COUNTY DISTRICT COURT

THOMAS F NEVILLE

NO. **ORIGINAL**  
FILED  
A.M. P.M. **12:59**

**DEC 02 2011**

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

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Stephen L. Adams, ISB 7534  
ANDERSON, JULIAN & HULL LLP  
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I – X,

Defendants.

Case No. **CV 0C 1123344**

SUMMONS

**NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF: THE  
COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE  
UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.**

TO: **RUSSELL LLOYD**  
**5943 S. Rising Sun Way**  
**Boise, Idaho 83709**



You are hereby notified that in order to defend this lawsuit, appropriate written response must be filed with the above designated court within 20 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the plaintiff(s) in the Complaint.

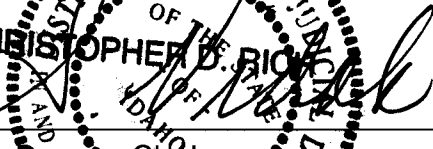
A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

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1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this 2 day of December, 2011.

CLERK OF THE DISTRICT COURT  
OF THE DISTRICT OF  
CHRISTOPHER D. RICH  
By:   
Deputy Clerk  
IDAHO  
DISTRICT  
ADA COUNTY

ORIGINAL

Brian K. Julian, ISB 2360  
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CHRISTOPHER D. RICH, Clerk  
By KATHY BIEHL  
Deputy

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
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Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I - X,

Defendants.

Case No. CV OC 1123344

AMENDED COMPLAINT AND  
DEMAND FOR JURY TRIAL

COMES NOW the above-named Plaintiff, American Semiconductor, Inc., an  
Idaho Corporation, by and through its attorneys of record, Anderson, Julian and Hull,  
LLP, and hereby claims as follows:

## PARTIES

1. That at all times relevant hereto, American Semiconductor, Inc. was and is a Corporation incorporated in the State of Idaho, with its principal place of business in Boise, Ada County, Idaho.

2. Based on information and belief, Sage Silicon Solutions, LLC was and continues to be a limited liability company, organized on or around January 28, 2010, with its principal place of business in Meridian, Ada County, Idaho.

3. Based on information and belief, David A. Roberts was and is a private individual with his primary residence located in Meridian, Ada County, Idaho.

4. Based on information and belief, Gyle D. Yearsley was and is a private individual with his primary residence located in Boise, Ada County, Idaho.

5. Based on information and belief, William Tiffany was and is a private individual with his primary residence located in Eagle, Ada County, Idaho.

6. Based on information and belief, Russell Lloyd was and is a private individual with his primary residence located in Middleton, Canyon County, Idaho.

7. Based on information and belief, Evelyn Perryman was and is a private individual with her primary residence located in Caldwell, Canyon County, Idaho.

8. Based on information and belief, Zilog, Inc. was and is a corporation incorporated in the state of Delaware, with its principal place of business located in Milpitas, California.

9. Based on information and belief, Zilog, Inc. has offices located in Meridian, Ada County, Idaho.

10. Based on information and belief, Does I-X are persons or entities whose identities are unknown, and who may be or are responsible or liable for the damages arising out of the facts alleged below.

### **VENUE AND JURISDICTION**

11. Jurisdiction is appropriate over the claims set forth in this Complaint pursuant to Idaho Code § 1-705 and pursuant to contract.

12. Personal jurisdiction is appropriate over the Defendants identified in this Complaint pursuant to Idaho Code § 5-514 and pursuant to contract.

13. Venue is appropriate in this Court over the claims and Defendants set forth in this Complaint pursuant to Idaho Code 5-404 and pursuant to contract.

14. The amount in controversy exceeds \$10,000.00.

### **GENERAL ALLEGATIONS**

15. Prior to January 28, 2010, David Roberts, William Tiffany, Gyle Yearsley, and Russell Lloyd, were employed by Plaintiff American Semiconductor.

16. Beginning on or around April 12, 2009, Evelyn Perryman was employed by Plaintiff American Semiconductor.

17. As part of their employment relationship with American Semiconductor, each of David Roberts, William Tiffany, Gyle Yearsley, Russell Lloyd, and Evelyn Perryman (referred to hereinafter as the "individual Defendants") signed an Employee Confidentiality Agreement.

18. The Employee Confidentiality Agreement contained the following language:

**2. Trade Secrets and Confidential Information.**

(a) Employee acknowledges that Employer's business and future success depend on the preservation of the trade secrets and other confidential information of Employer and its suppliers and customers (the "Secrets"). The Secrets include, without limiting the generality of the foregoing, research, development, production, existing and to-be-developed or acquired source codes, flow charts, product designs, market surveys, customer lists, business and financial information, product and marketing plans, personnel information, procedural and technical manuals and practices, servicing routines, and parts lists proprietary to Employer or its customers or suppliers. Employee agrees to protect and to preserve as confidential during and after the term of his/her employment all of the Secrets at any time known to Employee or in his/her possession or control (whether wholly or partially developed by Employee or provided to Employee, and whether embodied in a tangible medium or merely remembered).

...

**3. Disclosure of Inventions.** Employee will promptly disclose to Employer all inventions, improvements, designs, original works of authorship, formulas, processes, software programs, databases, mask works, and trade secrets (the "Inventions") that he/she has made or conceived or created, either alone or jointly with others, during the term of his/her employment, whether or not in the course of employment and whether or not such Inventions are patentable, copyrightable or protectable as trade secrets.

**4. Assignments of Inventions.** Employee agrees that all Inventions that (i) are developed using equipment, supplies, facilities, or trade secrets of Employer; (2) [sic] result from work performed by Employee for Employer; or (iii) relate to Employer's business or current or anticipated research and development, will be the sole and exclusive property of Employer, and Employee hereby irrevocably assigns all rights in such Inventions to Employer. Employee will sign any assignment or other documents as requested by Employer to evidence such assignment during or after the term of his/her employment by Employer, and will otherwise assist Employer in protective it [sic] rights in such Inventions as requested by Employer.

...

7. **Duty Not to Compete.** Employee understands that his/her employment requires his/her undivided attention and effort during normal business hours. While employed, Employee will not, without Employer's express written consent, provide services to, or assist in any manner, any business or third party which competes with the current or planned business of Employer.

19. On or around January 28, 2010, the individual Defendants, acting as either members or managers, formed Sage Silicon Solutions, LLC (hereinafter referred to as "Sage").

20. The Certificate of Organization for Sage as a limited liability company was filed with the Idaho Secretary of State on or around January 28, 2010.

21. Each of the individual Defendants were listed on the Certificate of Organization as either as member or manager.

22. On January 28, 2010, David Roberts, William Tiffany, Gyle Yearsley, and Russell Lloyd were still employed by American Semiconductor. Each of this Defendants had signed the Employee Confidentiality Agreement prior to this date.

23. On or around April 12, 2010, Evelyn Perryman signed an Employee Confidentiality Agreement, despite the fact that she was a member or manager of Sage.

24. Based on information and belief, before or after Sage was organized, a website was created for Sage. The website was freely available, and accessible by anyone with an internet connection.

25. The Sage website contained the following language:

Sage Silicon Solutions, Inc. is your complete silicon design resource from concept to fabrication. We offer silicon design services that enable you to realize your product in silicon.

26. Prior to the creation of Sage's website, American Semiconductor's website contained the following language:

American Semiconductor, Inc. is your complete silicon fabrication source from concept to fabrication. We offer a complete suite of services that enable you to realize your product in silicon.

27. The Sage website also included the following language:

Sage Silicon Solutions, Inc. is a team of ex-Zilog engineers who bring their experience in designing industry leading microcontrollers to your project. Our design background spans the complete needs for ASIC or SOC design from custom microprocessor cores and peripherals to on-chip memory and analog/mixed signal needs. In cooperation with American Semiconductor, Inc., we offer a portfolio of IP that is silicon proven.

28. At no point did American Semiconductor give the individual Defendants permission to start a business, limited liability company, or other corporate entity.

29. At no point did American Semiconductor give the individual Defendants or Sage permission to utilize language on Sage's website which is identical to the language utilized on American Semiconductor's website.

30. At no point did American Semiconductor give the individual Defendants or Sage permission to indicate on Sage's website that Sage was working "in cooperation with American Semiconductor Inc."

31. At no point did American Semiconductor release the individual Defendants from their obligations under the Employee Confidentiality Agreements, nor did American Semiconductor waive its rights under such agreement.

32. Based on information and belief, at some point after January, 2010,

Sage and the individual Defendants began providing design and other services to entities and third-parties, other than American Semiconductor.

33. One of those third-parties to whom Sage and the individual Defendants provided design and other services is Zilog, Inc. (hereinafter referred to as "Zilog").

34. Based on information and belief, Zilog, and/or its employees, agents, or representatives were aware, at the time it requested services from Sage, that the individual Defendants were still employed by American Semiconductor.

35. American Semiconductor discovered the existence of Sage on or around September 22, 2011.

36. Prior to September 22, 2011, American Semiconductor had no knowledge that the individual Defendants had formed Sage, or that the individual Defendants and/or Sage were providing services to Zilog.

37. Based on information and belief, the individual Defendants utilized American Semiconductor equipment, computers, and property in providing services to Zilog and/or other third parties.

38. Based on information and belief, the individual Defendants utilized American Semiconductor equipment, computers, and property in conducting Sage business.

39. Based on information and belief, the individual Defendants utilized trade secrets (as defined by the Idaho Trade Secret Act, Idaho Code § 48-801) and contractual "Secrets" and "Inventions" (as defined in the Employee Confidentiality



Agreement), owned by or assigned to American Semiconductor, in providing services to Zilog and/or other third parties.

40. On or about September 22, 2011, after American Semiconductor discovered the existence of Sage, and that the individual Defendants and Sage were providing services to Zilog, American Semiconductor demanded of Sage and the individual Defendants that they provide an assignment of all design work provided to Zilog.

41. Based on information and belief, Sage sent invoices to Zilog for services provided in the amount of at least \$124,181.75.

42. At no time has American Semiconductor received any compensation for the services provided by the individual Defendants and/or Sage to Zilog and/or other third parties.

43. At no time has American Semiconductor received from Sage or the individual Defendants any assignment of design work provided to Zilog and/or other third parties.

44. On September 27, 2011, American Semiconductor terminated David Roberts', Gyle Yearsley's and William Tiffany's employment relationship with American Semiconductor.

45. Russell Lloyd and Evelyn Perryman were given the option to remain as American Semiconductor employees on the condition they resigned their positions with Sage.

46. Mr. Lloyd chose to resign from Sage and retain his employment with

American Semiconductor. Mr. Lloyd is a current employee of American Semiconductor.

47. Evelyn Perryman resigned from American Semiconductor on November 1, 2011.

48. Based on information and belief, design work provided by Sage and/or the individual Defendants to Zilog is incorporated into Zilog's products.

49. The actions of the individual Defendants and Sage has hindered, impeded, and interfered with American Semiconductor's ability to offer its services in the open market, including obtaining service contracts with Zilog.

50. The individual Defendants had a duty to perform work for their employer American Semiconductor, instead of competing against it.

51. The actions of the individual Defendants and Sage has resulted in lost earnings and profits to American Semiconductor as a result the individual Defendants spending time, resources, and energy working on services as part of Sage, as opposed to working on projects for their employer, American Semiconductor.

52. The actions of Zilog have resulted in lost earnings and profits to American Semiconductor as a result of Zilog using American Semiconductor design resources, design knowledge and designs without approval from American Semiconductor.

53. The actions of Zilog have resulted in American Semiconductor design fixes, design knowledge and designs integrated into Zilog products without

approval from American Semiconductor.

54. Based on information and belief, Zilog has not made payment of all amounts invoiced related to services provided by Sage and the individual Defendants.

**FIRST CAUSE OF ACTION:**

**BREACH OF CONTRACT**

**(against the individual Defendants)**

55. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

56. While employed by American Semiconductor, each of the individual Defendants signed an Employee Confidentiality Agreement.

57. The Employee Confidentiality Agreement was supported by valid consideration including, without limitation, the continued at-will employment of the individual Defendants.

58. Thus, each Employee Confidentiality Agreement was a valid contract.

59. While employed by American Semiconductor, each of the individual Defendants was a key employee.

60. Without limitation, David Roberts was a manager at American Semiconductor with a high level of knowledge due to his exposure to American Semiconductor's technologies, trade secrets, intellectual property, business plans and procedures, customers, and other protected interests. Gyle Yearsley, Russell Lloyd, and William Tiffany were engineers, and Evelyn Perryman was a technician,

all of whom had a high level of knowledge due to their exposure to American Semiconductor's technologies, trade secrets, intellectual property, methods of operation, and other protected interests.

61. Each of these employees had the ability to harm or threaten American Semiconductor's legitimate business interests.

62. Pursuant to the Employee Confidentiality Agreement, each individual Defendant agreed to not compete against American Semiconductor.

63. Pursuant to the Employee Confidentiality Agreement, each individual Defendant agreed to assign any "Inventions" related "to Employer's business or current or anticipated research and development."

64. Each of the individual Defendants breached the Employee Confidentiality Agreement.

65. Without limitation, each individual Defendant competed against American Semiconductor by forming Sage and providing services to a third party.

66. Further, each individual Defendant failed to assign any and all "Inventions", which included any design work or other similar work provided to Zilog or other third parties.

67. American Semiconductor has been damaged by the individual Defendant's conduct, and the individual Defendant's breach is the proximate and direct cause of Plaintiff's injury.

68. The individual Defendants' conduct was willful, wanton, malicious, grossly negligent and/or outrageous. It was an extreme deviation from the

standards of reasonable conduct, and was done with knowledge of its likely effect on Plaintiff.

**SECOND CAUSE OF ACTION:**

**BREACH OF FIDUCIARY DUTY/ DUTY OF LOYALTY**

**(against the individual Defendants)**

69. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

70. As employees, key employees and managers employed by American Semiconductor, the individual Defendants owed American Semiconductor a fiduciary duty and/or a duty of loyalty.

71. Based on the individual Defendants' actions in forming Sage, a business entity which competed with American Semiconductor, it is apparent that while still employed by American Semiconductor, the individual Defendants knowingly and actively competed with their employer, including soliciting and providing services to American Semiconductor's potential client Zilog, and soliciting services to American Semiconductor's other potential clients.

72. Further, the individual Defendants received payments from Zilog for services provided, which should have been directed and/or assigned to American Semiconductor.

73. By engaging in such disloyal conduct, the individual Defendants breached their duties owed to American Semiconductor.

74. American Semiconductor has been damaged by this breach of duty,

and the individual Defendant's breach is the direct and proximate cause of American Semiconductor's injuries.

**THIRD CAUSE OF ACTION:**

**BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

**(against the individual Defendants and Sage)**

75. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

76. Under Idaho law, every contract is deemed to have an implied covenant of good faith and fair dealing.

77. Pursuant to the implied covenant of good faith and fair dealing, a party to a contract is not permitted to nullify or significantly impair the benefits that the other party reasonably expects to receive under the contract.

78. The conduct of the individual Defendants and Sage deprived American Semiconductor of the benefits it reasonably expected to receive under the Employee Confidentiality Agreement, including any amounts paid by Zilog or "Inventions" which were to be assigned to American Semiconductor.

79. American Semiconductor has been damaged by this breach, and the breach is the direct and proximate cause of American Semiconductor's injuries.

**FOURTH CAUSE OF ACTION:**

**TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE AND CONTRACT**

**(against the individual Defendants and Sage)**

80. Plaintiff realleges and hereby incorporates the allegations made in the

foregoing paragraphs as if set forth herein in full.

81. The individual Defendants and Sage were aware of the existence of the Employee Confidentiality Agreements between the individual Defendants and American Semiconductor.

82. The individual Defendants and Sage were aware that American Semiconductor and Sage would be seeking to provide similar or identical services to third parties, including Zilog.

83. By forming Sage and providing services to third-parties such as Zilog, the individual Defendants tortiously interfered with American Semiconductor's prospective economic advantage, including depriving American Semiconductor of the opportunity to seek to provide services to Zilog.

84. Further, the individual Defendants and Sage tortiously interfered with the Employee Confidentiality Agreement by seeking to provide services to third-parties.

85. The individual Defendants and Sage were aware that American Semiconductor had, in the past, sought to provide services to Zilog, and would, in the future, continue to seek to provide services to Zilog and other third-parties.

86. American Semiconductor has been damaged by this conduct, and damages were directly and proximately caused by the individual Defendants' and Sage's tortious interference.

**FIFTH CAUSE OF ACTION:**

**IDAHO TRADE SECRET ACT VIOLATION, I.C. § 48-801, *et seq.***

**(against the individual Defendants and Sage)**

87. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

88. Based on information and belief, the individual Defendants, as employees of American Semiconductor, obtained American Semiconductor's trade secrets and/or other protectable interests and business model for design services as a result of their employment.

89. Based on information and belief, such trade secrets and/or other protectable interests were utilized in providing services to Zilog, in violation of the Idaho Trade Secret Act.

90. Such violation of the Idaho Trade Secret Act resulted in damages to American Semiconductor, or a benefit to the individual Defendants and Sage, in the amount of at least \$124,181.75. Plaintiff seek recovery of such damages in an amount to be proven at trial, disgorgement of the benefit received by the individual Defendants and Sage, and/or a reasonable royalty for the unauthorized use of American Semiconductor's trade secrets and/or other protectable interests.

91. Due to Sage's and the individual Defendants' malicious and willful conduct, American Semiconductor seeks exemplary damages not to exceed twice the amount awarded pursuant to the Idaho Trade Secret Act.

**SIXTH CAUSE OF ACTION:**

**IMPROPER APPROPRIATION OF AMERICAN SEMICONDUCTOR'S NAME**

**(against the individual Defendants and Sage)**



92. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

93. By falsely stating on Sage's website that it was working "in cooperation with American Semiconductor, Inc.", the individual Defendants and Sage improperly appropriated American Semiconductor's name for their own benefit.

94. Such action resulted in damages to American Semiconductor, including lost potential for obtaining service contracts with Zilog in the amount of at least \$124,181.75.

#### **SEVENTH CAUSE OF ACTION:**

##### **UNJUST ENRICHMENT**

**(against the individual Defendants and Sage)**

95. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

96. The individual Defendants have received a benefit from American Semiconductor, in the form of salary payments and benefits while the individual Defendants formed and operated Sage.

97. The individual Defendants accepted and appreciated this benefit.

98. It would be inequitable for the individual Defendants to retain the benefit of salary payments and benefits while the individual Defendants operated a business in direct competition with American Semiconductor.

99. Further, both the individual Defendants and Sage received a benefit

from utilizing American Semiconductor's trade secrets, in the form of payment for services from Zilog for such services.

100. The individual Defendants and Sage received and appreciated such benefits.

101. It would be inequitable for the individual Defendants and Sage to retain such benefit where such benefit was received in direct violation of the Employee Confidentiality Agreement, fiduciary duties and duties of loyalty, and Idaho statute.

102. The individual Defendants and Sage should be disgorged of the benefits that they've received.

103. American Semiconductor is entitled to recoup such disgorgement, as the individual Defendants and Sage received such benefit to American Semiconductor's detriment.

#### **EIGHTH CAUSE OF ACTION:**

#### **CONSUMER PROTECTION ACT VIOLATION**

**(against the individual Defendants and Sage)**

104. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

105. Sage and the individual Defendants included and incorporated American Semiconductor's name into Sage's website.

106. Sage and the individual Defendants further indicated that they worked "in cooperation with American Semiconductor, Inc."

107. American Semiconductor did not work in cooperation with Sage, nor did it ever give permission for its name to be used in Sage's website.

108. Such acts did or would cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of Sage and the individual Defendants' services, in violation of the Idaho Consumer Protection Act.

109. American Semiconductor has been damaged by this conduct, and requests all relief allowed under the Idaho Consumer Protection Act, including statutory damages and injunctive relief.

**NINTH CAUSE OF ACTION:**

**DECLARATORY RELIEF**

**(against the individual Defendants, Sage, and Zilog)**

110. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

111. Pursuant to Idaho Code § 10-1201, courts have the power to declare the rights, status, and other legal relations between parties.

112. A contract existed between the individual Defendants and American Semiconductor whereby all "Inventions" created by the individual Defendants during the term of their employment are assigned to American Semiconductor.

113. Based on information and belief, "Inventions", including design work created or prepared by the individual Defendants are included in Zilog's products.

114. Based on information and belief, the individual Defendants and/or Sage provided design and other services to Zilog pursuant to contract.

115. American Semiconductor is legally entitled to an assignment of rights in all "Inventions" incorporated into Zilog products which were prepared or created by the individual Defendants and/or Sage.

116. Further, pursuant to the Idaho Trade Secrets Act, American Semiconductor may be entitled to a reasonable royalty for all "Inventions" incorporated into Zilog products, as such "Inventions" include trade secrets or other protectable interests owned by American Semiconductor.

**TENTH CAUSE OF ACTION:**

**INJUNCTIVE RELIEF**

**(against the individual Defendants, Sage, and Zilog)**

117. Plaintiff realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

118. Based on information and belief the individual Defendants and Sage continue to operate and provide services or advertisements for services to third parties.

119. Based on information and belief, Zilog continues to use products which incorporate "Inventions" and trade secrets belonging to American Semiconductor.

120. American Semiconductor seeks both preliminary and permanent injunctive relief preventing the individual Defendants and Sage to continue from operating or providing services or advertisements for services to third-parties which is in contravention of the Employee Confidentiality Agreement.

121. American Semiconductor seeks both preliminary and permanent injunctive relief preventing the individual Defendants, Sage, and Zilog from utilizing or disclosing American Semiconductor's "Inventions" or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such "Inventions" or trade secrets.

#### **RESERVATION OF RIGHTS AND NOTICE PLEADING**

122. As this is a notice pleading jurisdiction, Plaintiffs hereby give notice of the intent to include in this Complaint and to pursue any and all claims and causes of action which could justifiably be inferred based on the facts alleged and the specific causes of action pled.

123. Plaintiffs reserve the right to amend this Complaint to specifically include and identify any claims or causes of action which may be discovered through the course of discovery, including but not limited to Federal copyright violations and Federal and state trademark violations.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

- a. For damages, statutory damages, treble damages, in an amount to be proven at trial, but which exceeds \$10,000. Such damages include, but are not limited to, lost profits due to lost design capacity, costs of recruitment, hiring and training for replacement of terminated employees, lost income related to competition from Sage, loss of employee time while the individual Defendants were performing work for Sage instead of for American Semiconductor, etc.
- b. Disgorgement of any improperly received benefits, such as payments for services from Zilog, employee salaries and benefits, etc.
- c. Preliminary and permanent injunctive relief preventing the individual

Defendants and Sage to continue from operating or providing services or advertisements for services to third-parties which is in contravention of the Employee Confidentiality Agreement.

- d. Preliminary and permanent injunctive relief preventing the individual Defendants, Sage, and Zilog from utilizing or disclosing American Semiconductor's "Inventions" or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such "Inventions" or trade secrets.
- e. Declaratory relief determining the relationship between American Semiconductor, the individual Defendants, Sage, and Zilog, with respect to the Employee Confidentiality Agreement, and American Semiconductor's right to the "Inventions" and trade secrets utilized during the services provided to Zilog.
- f. Imposition of a constructive trust on all payments owed by Zilog or other third parties to Sage which remain unpaid, for the benefit of Plaintiff American Semiconductor.
- g. For any and all attorney fees and costs allowed, including pursuant to Idaho Code §§ 12-120, 12-121, 48-608, and otherwise as allowed by law.
- h. For an award of prejudgment interest, as allowed pursuant to Idaho Code § 28-22-104 or any other applicable code or rule.
- i. [Reserved]
- j. For any such other and further relief as this Court deems just and proper under the circumstances.

**PLAINTIFF DEMANDS TRIAL BY JURY AS TO ALL ISSUES.**

DATED this 8 day of December, 2011.

ANDERSON, JULIAN & HULL LLP

By Brian K. Julian  
Brian K. Julian, Of the Firm  
Attorneys for Plaintiff

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FEB 01 2012

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NO. \_\_\_\_\_ FILED  
A.M. 11:14 P.M. \_\_\_\_\_

FEB 01 2012

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDA K  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho limited liability company; ZILOG,  
INC., a Delaware Corporation; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, and Defendants DOES I-X,

Defendants.

Case No. CV-OC-2011-23344

**DEFENDANTS' VERIFIED  
ANSWER TO AMENDED  
COMPLAINT AND DEMAND  
FOR JURY TRIAL, AND  
DEFENDANTS' AFFIRMATIVE  
DEFENSES AND  
COUNTERCLAIMS**

**DEFENDANTS' VERIFIED ANSWER TO AMENDED COMPLAINT AND DEMAND  
FOR JURY TRIAL, AND DEFENDANTS' AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS - 1**

000088

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYED, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,  
Counterclaimants,

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,  
Counterdefendant.

COME NOW the above-named Defendants David Roberts, Gyle Yearsley, and William Tiffany and Sage Silicon Solutions, LLC ("Sage"), by and through their attorney of record, Russell G. Metcalf, Yost & Metcalf, PLLC, and, in response to Plaintiff's Complaint and Demand for Jury Trial (the "Complaint"), admit, deny and aver as follows:

#### **ADMISSIONS AND DENIALS**

1. Defendants deny each and every allegation contained in the Complaint that is not specifically admitted herein.
2. With regard to the allegations contained in Paragraphs 1, 8, 9, 10, 26, 34, 48, 52, 53, 119 of the Complaint, Defendants lack sufficient information and knowledge to either admit or deny these allegations and, accordingly, Defendants deny the same, in their entirety.

**DEFENDANTS' VERIFIED ANSWER TO AMENDED COMPLAINT AND DEMAND  
FOR JURY TRIAL, AND DEFENDANTS' AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS - 2**



3. With regard to the allegations contained in Paragraphs 3, 4, 5, 7, 18, 20, 21, 22, 23, 41, 44, 54, 76, 77, 81, 111 of the Complaint, Defendants admit these allegations in their entirety.
4. With regard to the allegations contained in Paragraphs 6, 11, 12, 13, 14, 28, 30, 35, 37, 38, 39, 49, 51, 58, 59, 61, 64, 65, 66, 67, 68, 71, 73, 74, 78, 79, 82, 83, 84, 85, 86, 88, 89, 90, 93, 94, 99, 102, 103, 107, 108, 109, 113, 114, 115, 116, 118, 120, 121 of the Complaint, Defendants deny these allegations in their entirety.
5. The allegations contained in Paragraphs 55, 69, 75, 80, 87, 92, 95, 104, 110, 117 merely incorporate allegations of prior paragraphs and do not require a response from Defendants. Nevertheless, to the extent that Plaintiff may attempt to construe these paragraphs against Defendants, Defendants deny the same in their entirety.
6. With regard to the allegations contained in Paragraph 2 of the Complaint, Defendants admit only that Sage filed Articles of Organization with the Idaho Secretary of State on January 28, 2010, and that Sage continues to be an entity in good standing in the State of Idaho. Defendants deny the remaining allegations of Paragraph 2 not specifically admitted herein.
7. With regard to the allegations contained in Paragraph 15 of the Complaint, Defendants Yearsley, Roberts, and Tiffany admit only that their employment with Plaintiff commenced on January 19, 2010. Defendants deny each and every other allegation contained in Paragraph 15 not specifically admitted herein.

8. With regard to the allegations contained in Paragraph 16 of the Complaint, Defendants deny the allegations of this Paragraph in their entirety. Defendant, Evelyn Perryman's employment with Plaintiff began in or about April, 2010.
9. With regard to the allegations contained in Paragraph 17 of the Complaint, Defendants admit only that at the commencement of their employment with Plaintiff they signed a document titled "Employee Confidentiality Agreement" (the "ECA"). Defendants deny each and every other allegation contained in Paragraph 17 not specifically admitted herein.
10. With regard to the allegations contained in Paragraph 19 of the Complaint, Defendants admit only that the Sage filed its Articles of Organization (the "Articles") with the State of Idaho on January 28, 2010. Prior to that time, and as early as August, 2009, Sage and its members were doing business as a joint venture. Accordingly, Defendants deny the remaining allegations contained in Paragraph 19 not specifically admitted herein.
11. With regard to the allegations contained in Paragraph 24 of the Complaint, Defendants admit only that before Sage filed its Articles and before the Defendants Roberts, Tiffany, Yearsley, Lloyd and Perryman became employees of Plaintiff, the Defendants Roberts, Tiffany, Yearsley, Lloyd and Perryman had formed a website. Defendants deny each and every other allegation contained in Paragraph 24 not specifically admitted herein.
12. With regard to the allegations contained in Paragraph 25 of the Complaint, Defendants admit only that the website created by Defendants Roberts, Tiffany, Yearsley, Lloyd and Perryman prior to their employment with ASI did contain the language identified in

Paragraph 25. Defendants deny each and every other allegation contained in Paragraph 25 not specifically admitted herein.

13. With regard to the allegations contained in Paragraph 27 of the Complaint, Defendants admit only that the website created by Defendants Roberts, Tiffany, Yearsley, Lloyd and Perryman prior to their employment with ASI did contain the language identified in Paragraph 27. Defendants deny each and every other allegation contained in Paragraph 27 not specifically admitted herein.

14. With regard to the allegations contained in Paragraph 29 of the Complaint, Defendants specifically deny that the language in the website created by Defendants Roberts, Tiffany, Yearsley, Lloyd and Perryman was identical to language contained on Plaintiff's website. Defendants further deny all remaining allegations in Paragraph 29 as well.

15. With regard to the allegations contained in Paragraph 31 of the Complaint, Defendants deny the allegation that Plaintiff did not release the Defendants Roberts, Tiffany, Yearsley, Lloyd and Perryman from their obligations under the ECA. With regard to the remaining allegations contained in Paragraph 31, Defendants lack sufficient knowledge and information to either admit or deny these allegations and, accordingly, Defendants deny the same in their entirety.

16. With regard to the allegations contained in Paragraph 32 of the Complaint, Defendants admit only that after January, 2010, the Defendants provided verification services for the Defendant Zilog, Inc. ("Zilog"). The Defendants deny the remaining allegations of Paragraph 32 not specifically admitted herein.

17. With regard to the allegations contained in Paragraph 33 of the Complaint, Defendants admit only that after January, 2010, the Defendants provided verification services for the Defendant Zilog, Inc. ("Zilog"). The Defendants deny the remaining allegations of Paragraph 33 not specifically admitted herein.
18. With regard to the allegations contained in Paragraph 36 of the Complaint, Defendants deny the allegation that prior to September 22, 2011, Plaintiff had no knowledge that the Defendants Roberts, Tiffany, Yearsley, Lloyd and Perryman had formed Sage. With regard to the remaining allegations contained in Paragraph 36, Defendants lack sufficient knowledge and information to either admit or deny these allegations and, accordingly, Defendants deny the same in their entirety.
19. With regard to the allegations contained in Paragraph 40 of the Complaint, Defendants deny the allegation that Plaintiff did not discover that the Defendants had formed Sage until September 22, 2011. With regard to the remaining allegations contained in Paragraph 40, Defendants are unclear as to what Plaintiff means when it alleges that it demanded the Defendants to "assign" to Plaintiff all work provided to Zilog and, accordingly, Defendants deny the remaining allegations of Paragraph 40 in their entirety.
20. With regard to the allegations contained in Paragraph 42 of the Complaint, Defendants admit only that they provided verification services to Zilog and that the Plaintiff did not receive any compensation for the work provided by the Defendants to Zilog as said work was provided by Defendants to Zilog on the Defendants' own time. The Defendants deny that they performed services for any entity other than Zilog and, accordingly,

Defendants deny the remaining allegations of Paragraph 42 not specifically admitted herein.

21. With regard to the allegations contained in Paragraph 43 of the Complaint, Defendants are unclear as to what Plaintiff means when it alleges that it never received any "assignment" of work. Accordingly, Defendants deny the allegations contained in Paragraph 43 in their entirety.
22. With regard to the allegations contained in Paragraphs 45, 46 and 47 of the Complaint, Defendants admit only that Defendants Lloyd and Perryman were given the choice to continue their employment with Plaintiff and that Defendant Lloyd chose to continue working for Plaintiff. Defendants deny each and every other allegation contained in Paragraphs 45, 46 and 47 not specifically admitted herein.
23. With regard to the allegations contained in Paragraph 50 of the Complaint, Defendants deny the allegations of this paragraph to the extent that it implies that the Defendants were competing with the Plaintiff. The Defendants admit each and every other allegation contained in Paragraph 50 not specifically denied herein.
24. With regard to the allegations contained in Paragraphs 56 and 57 of the Complaint, Defendants admit only that contemporaneous with the commencement of their employment, each of the Defendants, Roberts, Tiffany, Yearsley, Lloyd and Perryman signed the ECA. Defendants deny each and every other allegation contained in Paragraphs 56 and 57 not specifically admitted herein.
25. With regard to the allegations contained in Paragraph 60 of the Complaint, Defendants admit only that Defendant Roberts was a manager; Defendants Yearsley, Lloyd and

Tiffany were engineers; and Defendant Perryman was a technician. Defendants deny each and every other allegation contained in Paragraph 60 not specifically admitted herein.

26. With regard to the allegations contained in Paragraph 62 of the Complaint, Defendants admit only that the ECA contained language prohibiting its signatories from competing with the Plaintiff. Defendants deny each and every other allegation contained in Paragraph 62 not specifically admitted herein. Specifically, Defendants deny any implication in Paragraph 62 that they competed with the Plaintiff.

27. With regard to the allegations contained in Paragraph 63 of the Complaint, Defendants admit only that the ECA contained language requiring the assignment of any inventions related to Plaintiff's business. Defendants deny each and every other allegation contained in Paragraph 63 not specifically admitted herein. Specifically, Defendants deny any implication in Paragraph 63 that they made any invention, that the invention was related to Plaintiff's business and that the Defendants failed to assign the invention to the Plaintiff.

28. With regard to the allegations contained in Paragraph 70 of the Complaint, Defendants admit only that as a general rule, agents owe a fiduciary duty or duty of loyalty to a principal and as agents of Plaintiff, Defendants would owe a fiduciary duty to Plaintiff. Defendants deny each and every other allegation contained in Paragraph 70 not specifically admitted herein. Specifically, Defendants deny that they breached any fiduciary duty or duty of loyalty that they may have owed to Plaintiff in this matter.

29. With regard to the allegations contained in Paragraph 72 of the Complaint, Defendants admit only that the Defendant Sage received payments from Zilog for services performed. Defendants deny each and every other allegation in Paragraph 72 not specifically admitted herein.
30. With regard to the allegations contained in Paragraph 91 of the Complaint, the allegations contained in this Paragraph are tantamount to a prayer for relief and as such this Paragraph does not appear to require a response from the Defendants. However, to the extent that the allegations contained in Paragraph 91 imply that the Defendants acted maliciously and willfully towards Plaintiff, the Defendants deny the allegations contained in Paragraph 91 in their entirety.
31. With regard to the allegations contained in Paragraphs 96 and 97 of the Complaint, Defendants admit that they received salary and benefits from Plaintiff while they were also working for Defendant Sage. Defendants deny any implication in Paragraphs 96 and 97 that they formed Sage after their employment with Plaintiff commenced and, accordingly, Defendants deny each and every allegation of Paragraph 96 not specifically admitted herein.
32. With regard to the allegations contained in Paragraphs 98 of the Complaint, Defendants deny that they operated a business in direct competition with Plaintiff and, accordingly, Defendants deny the allegations of Paragraph 98 in their entirety.
33. With regard to the allegations contained in Paragraph 100 of the Complaint, Defendants admit only that they were paid by Zilog for services performed for Zilog. To the extent that the allegations in Paragraph 100 imply that Defendants utilized Plaintiff's trade

secrets in order to obtain benefits from Zilog, Defendants deny these allegations in their entirety.

34. With regard to the allegations contained in Paragraph 101 of the Complaint, Defendants deny that they received benefits as a result of violating the ECA and/or any fiduciary duties owed to Plaintiff. Accordingly, Defendants deny the allegations contained in Paragraph 101 in their entirety.

35. With regard to the allegations contained in Paragraph 105 of the Complaint, Defendants admit only that the website that was created by the Defendants Roberts, Tiffany, Yearsley, Lloyd and Perryman prior to their employment with Plaintiff made reference to the Plaintiff with the consent and cooperation of the Plaintiff. Defendants deny each and every other allegation contained in Paragraph 105 not specifically admitted herein.

36. With regard to the allegations contained in Paragraph 106 of the Complaint, Defendants admit only that the website created by Defendants Roberts, Tiffany, Yearsley, Lloyd and Perryman prior to their employment with ASI did contain the language identified in Paragraph 106. Defendants deny each and every other allegation contained in Paragraph 106 not specifically admitted herein.

37. With regard to the allegations contained in Paragraph 112 of the Complaint, Defendants admit only that pursuant to the terms of the ECA, all inventions created by the Defendants within the scope and course of their employment with Plaintiff were to be assigned to Plaintiff. Defendants admit any and all other allegations contained in Paragraph 112 not specifically admitted herein.



38. With regard to the allegations contained in Paragraphs 122 and 123, the allegations in these Paragraphs do not require a responsive pleading. However, to the extent that the allegations contained in these Paragraphs imply other grounds or claims for which Defendants may be liable to the Plaintiff, Defendants deny the same in their entirety.

### **AFFIRMATIVE DEFENSES**

By stating certain defenses as "affirmative defenses", Defendants do so for the purpose of completeness and do not intend to suggest that these Defendants have the burden of proof of any such defense. Furthermore, these Defendants have not had the opportunity to conduct discovery in this case and, by failing to raise an affirmative defense or counterclaim, do not intend to waive any such defense and/or claim, and Defendants specifically reserve the right to amend their Answer to include additional affirmative defenses and to file any such counterclaim.

#### **FIRST AFFIRMATIVE DEFENSE**

##### **(FAILURE TO STATE A CAUSE OF ACTION)**

One or more of the claims in the Complaint fails to constitute a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

##### **(ESTOPPEL/EQUITABLE ESTOPPEL/QUASI ESTOPPEL)**

Plaintiff's claims against the Defendants are barred by the doctrines of estoppel, equitable estoppel and/or quasi estoppel.

#### **THIRD AFFIRMATIVE DEFENSE**

##### **(LACHES)**

**DEFENDANTS' VERIFIED ANSWER TO AMENDED COMPLAINT AND DEMAND  
FOR JURY TRIAL, AND DEFENDANTS' AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS - 11**

Plaintiff's claims against the Defendants are barred by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**

**(WAIVER)**

Plaintiff's claims against the Defendants are barred by the doctrine of waiver.

**FIFTH AFFIRMATIVE DEFENSE**

**(UNCLEAN HANDS)**

Plaintiff's claims against the Defendants are barred by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

**(RATIFICATION)**

Plaintiff's claims against the Defendants are barred by the doctrine of ratification whereby the Plaintiff, by and through its principals and/or agents, ratified the conduct of the Defendants.

**SEVENTH AFFIRMATIVE DEFENSE**

**(SETOFF)**

Plaintiff's claims for monetary damages against the Defendants are subject to a setoff in the amount that Plaintiff would have been obligated to compensate to the Defendants for the benefits allegedly obtained by Defendants.

**EIGHTH AFFIRMATIVE DEFENSE**

**(ECONOMIC LOSS)**

Plaintiff's tort claims are precluded by application of the economic loss doctrine which prohibits tort claims to recover strictly economic loss.

### **NINTH AFFIRMATIVE DEFENSE**

#### **(MUTUAL MISTAKE/UNILATERAL MISTAKE)**

1. Defendants', Roberts, Yearsley, Lloyd and Tiffany, employment with Plaintiff commenced on or about January 19, 2010.

2. Defendant's, Perryman, employment with Plaintiff commenced on or about April 12, 2010.

3. At the time of the commencement of their employment, the Plaintiff and the Defendants had negotiated terms and conditions of their employment, which terms and conditions constituted an express employment contract (the "Contract").

4. There was no integrated written contract executed by the parties. Rather, the parties express Contract consisted of their employment contract negotiations, official offer letters, and/or other documents and discussions between the parties.

5. At the time of the commencement of the employment Contract between the Plaintiff and the Defendants, the parties understood that the Defendants were being employed by the Plaintiff to service a specific design contract - the SAIC contract - and to bring the Plaintiff into compliance with the terms of its SBIR proposal which represented that the Defendants were employees of Plaintiff. The parties further understood that as part of the employment Contract, the Defendants were not being employed to provide a broad and comprehensive spectrum of design services for the Plaintiff.

6. As part of the negotiations of the employment Contract, the Defendants discussed with the Plaintiff, by and through its principals and/or agents, that the Defendants had been and intended to continue operating a joint venture known as Sage Silicon Solutions ("Sage") wherein the Defendants were in the business of designing their own Intellectual Property ("IP") and performing other services.

7. Prior to the commencement of the employment Contract, all of the parties were aware that the Defendants were operating Sage and were designing IP on behalf of Sage and performing other services – even though Sage was not officially filed with the Idaho Secretary of State until after January 19, 2010.

8. As part and parcel of the employment negotiations, the Defendants represented their intent to operate Sage and to design IP for and on behalf of Sage and to perform other services. The Defendant's ability to continue operating Sage and to design IP for and on behalf of Sage constituted a material term and condition of the Defendants employment Contract with Plaintiff.

9. As part and parcel of the employment negotiations, the Plaintiff, by and through its agents, represented to the Defendants that they could continue to operate Sage on their own time.

10. Plaintiff's claims against the Defendants indicate a mutual mistake and/or a unilateral mistake on the part of the parties to the employment Contract concerning a material provision of the employment Contract.

11. Plaintiff's claims against the Defendants are excused by the existence of a mutual mistake and/or unilateral mistake on the part of one or more parties to the employment Contract.

#### **TENTH AFFIRMATIVE DEFENSE**

##### **(FRAUD/FRAUD IN THE INDUCEMENT)**

1. Defendant's incorporate as though fully set forth herein, the allegations contained Paragraphs numbered 1 through 11 of Defendant's Ninth Affirmative Defense, above. In addition to these paragraphs, Defendant's allege as follows:

2. At the time of the negotiation and commencement of the employment Contract, Plaintiff represented to Defendants that they needed to be full or part time employees of Plaintiff in order that Plaintiff might fulfill the terms and conditions of a specific design contract that had been awarded to Plaintiff by a third party vendor.

3. At the time of the negotiation and commencement of the employment Contract, Plaintiff represented that Defendants could continue to operate Sage while they were employees of ASI.

4. Plaintiff's representations to Defendants were material to Defendants' decision to commence an employment relationship with Plaintiff.

5. Plaintiff's representations were known by Plaintiff to be false and were made with the intent that Defendants rely upon said representations and in an effort to induce Defendants to commence an employment relationship with Plaintiff.

6. At the time of Plaintiff's representations to Defendants, that they could continue to operate Sage, Defendants were unaware of the falsity of Plaintiff's representations and reasonably and justifiably relied upon Plaintiff's representations.

7. As a result of Plaintiff's knowingly false representations, the Defendants were induced to commence an employment relationship with Plaintiff.

8. Plaintiff's claims against Defendants are precluded by the doctrines of fraud and fraud in the inducement.

### **COUNTERCLAIM**

As and for their Counterclaims against the Plaintiff/Counterdefendant, Defendants/Counterclaimants herein complain and allege as follows:

### **PARTIES AND JURISDICTION**

1. Upon information and belief, the Counterdefendant, American Semiconductor, Inc., is an Idaho corporation incorporated in the State of Idaho with its principal place of business in Boise, Idaho.

2. The Counterclaimant, Sage Silicon Solutions, LLC, is an Idaho limited liability company organized in the State of Idaho and with its principal place of business in Boise, Idaho.

3. The Counterclaimant, David Roberts, is an individual whose primary residence is located in Meridian, Ada County, Idaho.

4. The Counterclaimant, Gyle D. Yearsley, is an individual whose primary residence is located in Boise, Ada County, Idaho.

5. The Counterclaimant, William Tiffany, is an individual whose primary residence is located in Eagle, Ada County, Idaho.

6. Jurisdiction of this matter is appropriate pursuant to Idaho Code Section 1-705.

7. Personal jurisdiction of this matter is appropriate pursuant to Idaho Code Section 5-514.

8. Venue is appropriate in this matter and before this court pursuant to Idaho Code Section 5-404.

9. Upon information and belief, the amount in controversy in this matter exceeds \$10,000.00.

#### **GENERAL ALLEGATIONS**

10. As early as May, 2009, the Defendants, Roberts, Yearsley, Tiffany, Lloyd and Perryman started a joint venture doing business as Sage Silicon Solutions ("Sage").

11. As part and parcel of their business with Sage, the Defendants designed proprietary and intellectual property ("IP") for and on behalf of Sage and also performed other services for and on behalf of Sage.

12. Between the period of May, 2009, and January 19, 2010 (the "Pre-employment Period"), the Defendants, with the knowledge and cooperation of Plaintiff, developed numerous analog IP and a standard cell library incorporating Plaintiff's foundry processes.

13. During the Pre-employment period the Defendants also developed extensive digital IP and design framework software unrelated to Plaintiff's processors or business, including, but not limited to a 16 bit timer and various software tools.

14. In August, 2009, during the Pre-employment period, the Defendants signed a non-disclosure agreement (the "NDA") with Plaintiff whereby the Plaintiff agreed to and did provide the Defendants with its proprietary process information to be incorporated by the Defendants in the Defendants' own and proprietary IP.

15. During the Pre-employment Period, the Defendants designed a test chip, which chip was provided to the Plaintiff for production using Plaintiff's foundry facilities and IP.

16. During the Pre-employment Period, the Plaintiff, through its principals and/or agents, assisted the Defendants in preparing a web page that would promote the purposes and abilities of Sage. The website that was to be prepared for Sage was also to be linked to the Plaintiff's own website wherein the Defendants and Sage would be regarded as business partners of/with Plaintiff. Even after the Defendants became employees of the Plaintiff, the Plaintiff, through its principals and/or agents, continued to offer assistance to the Defendants in preparing a website for Sage.

17. During the Pre-employment Period, the Plaintiff and the Defendants were working together to form a mutually beneficial business relationship.

18. During the Pre-employment Period, one or more of the Defendants, at the request of Plaintiff, prepared Small Business Innovation Research ("SBIR") proposals for and on behalf of the Plaintiff. The Plaintiff was awarded an SBIR grant.



19. During the Pre-employment Period, one or more of Defendants also wrote initial SAIC proposals for a contract that was eventually awarded to Plaintiff. Plaintiff did not compensate the Defendants for the preparation of the SBIR or SAIC proposals.

20. During the Pre-employment Period, the Plaintiff represented one or more of the Defendants as employees of the Plaintiff in order that Plaintiff might acquire the contract with SAIC. The Plaintiff did acquire the SAIC contract.

21. In or about January, 2010, the Plaintiff having acquired an SBIR grant and the SAIC contract, the Plaintiff contacted the Defendants to discuss the hiring of the Defendants as employees of Plaintiff.

22. The primary purpose of hiring the Defendants by Plaintiff was to ensure that Plaintiff was in compliance with the SBIR proposal that it had prepared and in which it represented the Defendants as employees of Plaintiff. Furthermore, the Plaintiff desired to hire the Defendants as employees in order to strengthen its position with the SAIC contract.

23. On or about January 19, 2010, following negotiations, the Defendants Roberts, Yearsley, Tiffany and Lloyd became employees of Plaintiff.

24. In or about April, 2010, under the same terms and conditions that were negotiated for the employment of the other Defendants, the Defendant, Evelyn Perryman, became an employee of Plaintiff.

25. Prior to the commencement of the Defendants' employment with Plaintiff, the Plaintiff, by and through its principals and/or agents, negotiated with Defendants to discuss terms and conditions of Defendants' employment with Plaintiff.

26. During the negotiations with Defendants, Plaintiff was aware that the Defendants had formed a joint venture – Sage – and was aware that a requisite term and condition of Defendants' employment with Plaintiff was that Defendants be allowed to continue to operate Sage – which included Defendants' right to design IP for Sage and to perform other services for and on behalf of Sage.

27. During the negotiation of the employment Contract with Defendants, the Plaintiff, by and through its principals and/or agents, represented to Defendants that they were being "employed" and not "independently contracted" in order to bring the Plaintiff into compliance with the SBIR and to strengthen Plaintiff's position with the SAIC contract.

28. Furthermore, during the negotiation of the employment Contract with the Defendants, the Plaintiff, by and through its principals and/or agents, and knowing that the Defendants were operating Sage, represented to Defendants that Plaintiff was a foundry and that Defendants could continue to operate Sage on their own time and as long as they did not use Plaintiff's equipment or facilities.

29. In reliance upon the representations made by Plaintiff, by and through its principals and/or agents, the Defendants agreed to become employees of the Plaintiff.

30. In or about March, 2011, around one year after the Defendants' employment with Plaintiff commenced, the Defendants entered into an independent contract with Zilog, Inc. ("Zilog"), a Delaware corporation doing business in California. The purpose of the contract between Defendants and Zilog was for the Defendants to provide verification/performance services for IP developed and owned by Zilog.

31. The Defendants had been contacted by and had discussed with Zilog the possibility of providing verification services prior to the commencement of Defendants employment with Plaintiff.

32. On September 27, 2011, the Plaintiff terminated the Defendants Roberts, Yearsley and Tiffany.

33. The Defendant Perryman was terminated a short time later.

34. The Defendant Lloyd, notwithstanding he is a named Defendant in the Plaintiff's Complaint, is still employed by Plaintiff.

35. Upon information and belief, the termination of the employment relationship between Plaintiff and the Defendants Roberts, Yearsley, Tiffany and Perryman, was because they were operating as Sage and had entered into independent contracts with private third parties while employees of Plaintiff.

36. On September 27, 2011, the Plaintiff, by and through its counsel, sent a demand letter demanding, *inter alia*, that the Defendants cease and desist operating as Sage and cease any and all business with Zilog.

37. Upon information and belief, the same demand letter that was sent to the Defendants was also tendered to Zilog.

#### **COUNT ONE**

#### **(FRAUD/FRAUD IN THE INDUCEMENT)**

38. Defendants incorporate by reference herein the allegations contained in Paragraphs 1 through 37 as though fully set forth herein.

39. In January, 2010, the Plaintiff employed the Defendants, Roberts, Yearsley, Tiffany and Lloyd. In April, 2010, the Plaintiff employed the Defendant, Perryman.

40. Prior to the commencement of the Defendants' employment with Plaintiff, the Plaintiff was aware that the Defendants were doing business as Sage.

41. Prior to the commencement of the Defendants' employment with Plaintiff, the Plaintiff represented to Defendants that if they became employees of Plaintiff they would be permitted to continue doing business as Sage on their own time and as long as they did not use Plaintiff's equipment or resources.

42. Prior to the commencement of the Defendants' employment with Plaintiff, the Plaintiff represented to Defendants that Plaintiff needed to employ Defendants so that Plaintiff would be in compliance with its own SBIR proposal and to strengthen Plaintiff's position with the SAIC contract.

43. Following the commencement of Defendants' employment with Plaintiff, Plaintiff terminated the Defendants Roberts, Yearsley, Tiffany and Perryman. Upon information and belief, the basis of the termination was that the terminated Defendants were doing business as Sage and because they had entered into an independent contract with Zilog.

44. The Plaintiff's representations to Defendants prior to the commencement of their employment were false and were made in effort to induce Defendants to become employees of Plaintiff, to become bound by a broad and comprehensive confidentiality agreement and to preclude the Defendants from doing business as Sage and from contracting with third parties.

45. At the time of the Plaintiff's representations, the Defendants were unaware that the Plaintiff's representations were false and in reasonable and justifiable reliance upon the Plaintiff's representations, the Defendants agreed to and did become employees of Plaintiff.

46. In September, 2011, notwithstanding its prior representations, the Plaintiff terminated the Defendants and demanded the Defendants cease and desist doing business as Sage and cease and desist doing business with Zilog.

47. As a direct and proximate result of Plaintiff's false representations, the Defendants have been harmed.

## **COUNT TWO**

### **(TORTIOUS INTERFERENCE WITH CONTRACT)**

48. Defendants incorporate by reference herein the allegations contained in Paragraphs 1 through 47 as though fully set forth herein.

49. Prior to the employment of Defendants, the Plaintiff was aware that the Defendants were doing business as Sage.

50. Prior to the employment of Defendants, the Plaintiff represented to Defendants that they could continue to do business as Sage on their own time and as long as they did not use Plaintiff's equipment or resources.

51. The Plaintiff was aware that as part and parcel of their business with Sage, the Defendants designed IP for and on behalf of Sage and in the course of doing business would potentially enter into contracts with third parties.

52. The Plaintiff tortiously interfered with the Defendants third party contract with Zilog by demanding Defendants and Zilog cease and desist any and all business with one another.

53. As a direct and proximate result of the Plaintiff's conduct, the Defendants have been damaged.

### **COUNT THREE**

#### ***(QUANTUM MERUIT)***

54. Defendants incorporate by reference herein the allegations contained in Paragraphs 1 through 53 as though fully set forth herein.

55. Prior to their employment with Plaintiff, one or more of the Defendants prepared an SBIR proposal for the Plaintiff.

56. Also prior to their employment with Plaintiff, one or more of the Defendants prepared an SAIC proposal for the Plaintiff.

57. As a direct and proximate result of the preparation of the SBIR and SAIC proposals by one or more of the Defendants, the Plaintiff was awarded an SBIR grant and the SAIC contract.

58. The Defendants were not compensated for any work that was performed by them for Plaintiff in preparing the SBIR or SAIC proposals.

59. That prior to the Defendants employment by Plaintiff, the Defendants designed various and proprietary IP, including, but not limited to a 16 bit timer and various software tools.

60. During the course of the Defendants' Roberts, Tiffany, Yearsley, Lloyd and Perryman, employment by Plaintiff, one or more of the defendants incorporated the Defendants own proprietary IP into the Plaintiff's product.

61. None of the Defendants have been compensated for the services performed to design the proprietary IP that was incorporated into the Plaintiff's product.

62. Under the doctrine of *Quantum Meruit* the Defendants are entitled to compensation for the work that was performed by them for Plaintiff in preparing the SBIR and SAIC proposals and in designing the proprietary IP that was incorporated into the Plaintiff's product.

#### COUNT FOUR

##### (UNJUST ENRICHMENT)

63. Defendants incorporate by reference herein the allegations contained in Paragraphs 1 through 62 as though fully set forth herein.

64. As set forth above, during the Pre-employment Period, one or more of the Defendants, at the request of the Plaintiff, prepared SBIR and SAIC proposals for the Plaintiff.

65. As a direct result of the preparation of the proposals, the Plaintiff was awarded the SBIR grant and the SAIC contract.

66. The SBIR and SAIC proposals were benefits that were conferred upon the Plaintiff by the Defendants and that the Plaintiff knowingly received and appreciated.

67. It would be unjust to allow Plaintiff to keep the benefit of the preparation of the SBIR and SAIC proposals without compensating the Defendants for the same.

68. In addition, during the Pre-employment Period, the Defendants designed various and proprietary IP, including, but not limited to a 16 bit timer and various software tools.

69. During the course of the Defendants' Roberts, Tiffany, Yearsley, Lloyd and Perryman, employment by Plaintiff, one or more of the defendants incorporated the Defendants own proprietary IP into the Plaintiff's product.

70. The proprietary IP that was provided to the Plaintiff by the Defendants constitutes a benefit that was knowingly received and appreciated by the Plaintiff.

71. It would be unjust to allow the Plaintiff to keep the benefits of the proprietary IP conferred upon Plaintiff without compensating the Defendants.

#### **Attorney Fees and Costs**

As a direct and proximate result of the Plaintiff's conduct in this matter, Defendants have been required to obtain counsel both to defend against the Plaintiff's allegations and to protect their own interests. Pursuant to applicable Idaho Rules, Statutes and case law, Defendants are entitled to recover their reasonable attorney fees and costs against the Plaintiff.

WHEREFORE, Defendants/Counterclaimants pray for Judgment, Order and Decree of the court as follows:

1. That pursuant to Count One of Defendants' Counterclaim, Plaintiff's Complaint be dismissed in its entirety and that the employment Contract between Plaintiff and Defendants be rescinded in its entirety.



2. That pursuant to Counts One and Two of Defendants' Counterclaim, Defendants be awarded damages for Plaintiff's fraudulent misrepresentations and tortious interference with contract.

3. That pursuant to Count Three of Defendants' Counterclaim, the Defendants be awarded the reasonable value of the services provided to Plaintiff in preparing the SBIR and SAIC proposals and designing IP incorporated into the Plaintiff's product, or in the alternative;

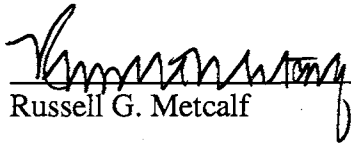
4. That pursuant to Count Four of the Defendants' Counterclaim, the Defendants be awarded the reasonable value of the benefits conferred upon the Plaintiff in preparing the SBIR and SAIC proposals and designing IP incorporated into the Plaintiff's product.

5. That Defendants be awarded their reasonable attorney fees and costs incurred to defend this matter.

6. For such other and further relief as the Court deems just and equitable and for attorney fees and costs incurred herein.

Dated this 13<sup>th</sup> day of January, 2012.

YOST & METCALF, PLLC

By: \_\_\_\_\_  
Russell G. Metcalf

VERIFICATION

STATE OF Idaho )  
 ) ss.  
County of Ada )

Defendant/Counterclaimant, Sage Silicon Solutions, LLC, by and through its member, David Roberts, states that the facts set forth in the foregoing instrument are true, accurate, and complete to the best of Defendant/Counterclaimant's knowledge and belief.

Sage Silicon Solutions, LLC,

By: David A. Roberts  
David Roberts

STATE OF Idaho )  
 ) ss.  
County of Ada )

Defendant/Counterclaimant, David Roberts, states that the facts set forth in the foregoing instrument are true, accurate, and complete to the best of Defendant/Counterclaimant's knowledge and belief.

David A. Roberts  
David Roberts

**DEFENDANTS' VERIFIED ANSWER TO AMENDED COMPLAINT AND DEMAND  
FOR JURY TRIAL, AND DEFENDANTS' AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS - 28**

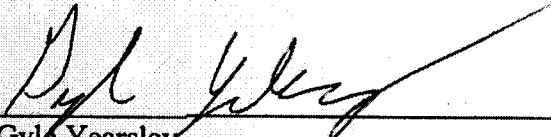
STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

Defendant/Counterclaimant, William Tiffany, states that the facts set forth in the foregoing instrument are true, accurate, and complete to the best of Defendant/Counterclaimant's knowledge and belief.

\_\_\_\_\_  
William Tiffany

STATE OF Idaho )  
County of Ada ) ss.

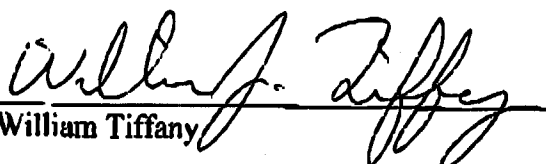
Defendant/Counterclaimant, Gyle Yearsley, states that the facts set forth in the foregoing instrument are true, accurate, and complete to the best of Defendant/Counterclaimant's knowledge and belief.

  
\_\_\_\_\_  
Gyle Yearsley

**DEFENDANTS' VERIFIED ANSWER TO AMENDED COMPLAINT AND DEMAND  
FOR JURY TRIAL, AND DEFENDANTS' AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS - 29**

STATE OF Idaho )  
County of Ada ) ss.

Defendant/Counterclaimant, William Tiffany, states that the facts set forth in the foregoing instrument are true, accurate, and complete to the best of Defendant/Counterclaimant's knowledge and belief.

  
William Tiffany

STATE OF Idaho )  
County of Ada ) ss.

Defendant/Counterclaimant, Gyle Yearsley, states that the facts set forth in the foregoing instrument are true, accurate, and complete to the best of Defendant/Counterclaimant's knowledge and belief.

\_\_\_\_\_  
Gyle Yearsley

**DEFENDANTS' VERIFIED ANSWER TO AMENDED COMPLAINT AND DEMAND  
FOR JURY TRIAL, AND DEFENDANTS' AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS - 29**

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of January, 2012, I caused a true and correct copy of the foregoing **VERIFIED ANSWER TO AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL, AND DEFENDANTS' AFFIRMATIVE DEFENSES AND COUNTERCLAIMS** to be served by the method indicated below, and addressed to the following:

Anderson, Julian & Hull, LLP  
Brian K. Julian  
250 South Fifth Street, Ste. 700  
P.O. Box 7426  
Boise, Idaho 83707

☒ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile

  
\_\_\_\_\_  
Russell G. Metcalf

**DEFENDANTS' VERIFIED ANSWER TO AMENDED COMPLAINT AND DEMAND  
FOR JURY TRIAL, AND DEFENDANTS' AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS - 30**

110  
10/24/12

Brian K. Julian, ISB 2360  
Stephen L. Adams, ISB 7534  
ANDERSON, JULIAN & HULL LLP  
C. W. Moore Plaza  
250 South Fifth Street, Suite 700  
Post Office Box 7426  
Boise, Idaho 83707-7426  
Telephone: (208) 344-5800  
Facsimile: (208) 344-5510  
E-Mail: [bjulian@ajhlaw.com](mailto:bjulian@ajhlaw.com)  
[sadams@ajhlaw.com](mailto:sadams@ajhlaw.com)

NO. ~~ORIGINAL~~  
AM

FEB 28 2012

CHRISTOPHER D. RICH, Clerk  
By KATHY BIEHL  
Deputy

Attorneys for Plaintiff

IN THE DISTRICT COURT OF  
THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND  
FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I – X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN

Case No. CV OC 1123344

ANSWER TO COUNTERCLAIMS

PERRYMAN, individuals,

Counterclaimants,

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

COMES NOW, the above-entitled Plaintiff, American Semiconductor, Inc., (hereinafter referred to as "ASI") by and through its counsel of record, Anderson, Julian & Hull, hereby denies any allegation in the Counterclaim not specifically admitted herein as follows:

**ADMISSIONS/DENIALS**

1. ASI hereby denies each and every allegation contained in the Counterclaim which is not specifically admitted herein.

2. With regard to the allegations contained in paragraphs 1 and 2 of the Counterclaim, they are admitted.

3. With regard to the allegations contained in paragraphs 3 through 5 of the Counterclaim, ASI is without sufficient knowledge to admit or deny the substance of these claims, and therefore they are denied.

4. With regard to the allegations contained in paragraph 6 of the Counterclaim, ASI only admits that this Court has jurisdiction over the subject matter contained in the Counterclaims.

5. With regard to the allegations contained in paragraph 7 of the Counterclaim, ASI only admits that this Court has personal jurisdiction over ASI.

6. With regard to the allegations contained in paragraph 8 of the Counterclaim, they are admitted.

7. With regard to the allegations contained in paragraphs 9 through 11 of the Counterclaim, ASI is without sufficient knowledge to admit or deny these allegations, and therefore, they are denied.

8. With regard to the allegations contained in paragraph 12 of the Counterclaim, ASI only admits that prior to employing Counterclaimants Roberts, Yearsley, and Tiffany, it gave them access to design tools and ASI's cell library, and further allowed them to use ASI's foundry process. The remainder of the allegations in this paragraph are specifically denied.

9. With regard to the allegations contained in paragraph 13 of the Counterclaim, ASI is without sufficient knowledge to admit or deny these allegations, and therefore, they are denied.

10. With regard to the allegations contained in paragraph 14 of the Counterclaim, ASI only admits that Counterclaimants Roberts, Yearsley, and Tiffany signed a non-disclosure agreement with ASI. The remainder of the allegations in this paragraph are specifically denied.

11. With regard to the allegations contained in paragraphs 15 – 16 of the Counterclaim, they are denied.

12. With regard to the allegations contained in paragraph 17 of the Counterclaim, ASI only admits that prior to Counterclaimants Roberts, Yearsley, and Tiffany being employed by ASI, ASI was working to try to cultivate a



relationship whereby these persons could become employed by ASI. ASI specifically denies that it ever worked to form a mutually beneficial business relationship with Counterclaimant Sage, as ASI was never informed of Sage's existence.

13. With regard to the allegations contained in paragraph 18 of the Counterclaim, ASI only admits that Counterclaimants Roberts, Yearsley, and Tiffany, or some of them, worked with ASI in preparing SBIR proposals, and that an SBIR contract was eventually created. The remainder of the allegations in this paragraph are specifically denied.

14. With regard to the allegations contained in paragraphs 19 – 23 of the Counterclaim, they are denied.

15. With regard to the allegations contained in paragraph 24 of the Counterclaim, ASI only admits that in or about April 2010, Evelyn Perryman became an employee of ASI.

16. With regard to the allegations contained in paragraph 25 of the Counterclaim, ASI only admits that Counterclaimants Roberts, Yearsley, and Tiffany negotiated with ASI regarding the terms of employment with ASI.

17. With regard to the allegations contained in paragraph 26 of the Counterclaim, they are denied.

18. With regard to the allegations contained in paragraph 27 of the Counterclaim, ASI only admits that Counterclaimants Roberts, Yearsley, and

Tiffany were employed by ASI. The remainder of the allegations in this paragraph are denied.

19. With regard to the allegations contained in paragraph 28 of the Counterclaim, they are denied.

20. With regard to the allegations contained in paragraph 29 of the Counterclaim, ASI is without sufficient knowledge to admit or deny these allegations and therefore, they are denied.

21. With regard to the allegations contained in paragraph 30 of the Counterclaim, ASI only admits that Counterclaimants Sage, Roberts, Yearsley, and Tiffany entered into a contract with Zilog, Inc. while Roberts, Yearsley, and Tiffany were employed by ASI. ASI is without sufficient knowledge to admit or deny the remainder of the allegations in this paragraph, and therefore they are denied.

22. With regard to the allegations contained in paragraph 31 of the Counterclaim, ASI is without sufficient knowledge to admit or deny these allegations and therefore, they are denied.

23. With regard to the allegations contained in paragraph 32 of the Counterclaim, ASI only admits that in or around September 27, 2011, ASI terminated the employment relationship with Counterclaimants Roberts, Yearsley, and Tiffany.

24. With regard to the allegations contained in paragraph 33 of the Counterclaim, ASI only admits that the employment relationship between ASI and Perryman ceased when Perryman resigned.

25. With regard to the allegations contained in paragraph 34 of the Counterclaim, ASI admits that Lloyd is still employed by ASI.

26. With regard to the allegations contained in paragraph 35 of the Counterclaim, ASI only admits that the employment relationship with Counterclaimants Roberts, Yearsley, and Tiffany was terminated because they acted in violation of their contracts with ASI, among other reasons. As stated above, Perryman resigned her employment relationship with ASI.

27. With regard to the allegations contained in paragraph 36 of the Counterclaim, ASI only admits that on or around September 27, 2011, ASI, through its counsel, sent a letter to Counterclaimants Roberts, Yearsley, and Tiffany.

28. With regard to the allegations contained in paragraph 37, ASI only admits that a letter was sent to Zilog.

29. With regard to the allegations contained in paragraph 38 of the Counterclaim incorporate by reference the allegations made in the foregoing paragraphs, and therefore is admitted or denied as stated above.

30. With regard to the allegations contained in paragraph 39 of the Counterclaim, ASI admits that Counterclaimants Roberts, Yearsley, Tiffany and Lloyd were employed by ASI, and in or around April 2010, Perryman was employed by ASI.

31. With regard to the allegations contained in paragraphs 40 through 42 of the Counterclaim, they are denied.

32. With regard to the allegations contained in paragraph 43 of the Counterclaim, ASI only admits that the employment relationship between ASI, Roberts, Yearsley and Tiffany were terminated for, among other reasons, that these individuals were operating an entity which competed with their then current employer, ASI, in violation of the contract with ASI. Perryman resigned her employment with ASI.

33. With regard to the allegations contained in paragraphs 44 through 47 of the Counterclaim, they are denied.

34. Paragraph 48 of the Counterclaim incorporates by reference the allegations in the foregoing paragraphs, and therefore are admitted or denied as stated above.

35. With regard to the allegations contained in paragraph 49 through 53 of the Counterclaim, they are denied.

36. Paragraph 54 of the Counterclaim incorporates by reference the allegations made in the preceding paragraphs, and therefore are admitted or denied as stated above.

37. With regard to the allegations contained in paragraph 55 of the Counterclaim, ASI only admits, as stated above, that Counterclaimants Roberts, Yearsley, and Tiffany, or some of them, worked with ASI in preparing SBIR proposals, for which payment was provided as directed by the Counterclaimants, or some of them.

38. With regard to the allegations contained in paragraphs 56 through 58 of the Counterclaim, they are denied.

39. With regard to the allegations contained in paragraph 59 of the Counterclaim, ASI is without sufficient knowledge to admit or deny these allegations, and therefore, they are denied.

40. With regard to the allegations contained in paragraph 60 of the Counterclaim, ASI is without sufficient knowledge to admit or deny these allegations, and therefore, they are denied. However, ASI specifically states that if Counterclaimants Roberts, Yearsley, and/or Tiffany did include proprietary IP into ASI's product, it was done so without ASI's knowledge or permission, and was in breach of contract with ASI, and was in bad faith.

41. With regard to the allegations contained in paragraphs 61 and 62 of the Counterclaim, they are denied.

42. Paragraph 63 incorporates by reference the allegations made in preceding paragraphs and therefore is admitted or denied as stated above.

43. With regard to the allegations contained in paragraph 64 of the Counterclaim, they are denied.

44. With regard to the allegations contained in paragraph 65 of the Counterclaim, ASI only admits, as stated above, that Counterclaimants Roberts, Yearsley, and Tiffany, or some of them, worked with ASI in preparing SBIR proposals, for which payment was provided as directed by the Counterclaimants. As for the SAIC contract, any preparation for such contract was prepared by ASI

employees, and denies that Counterclaimant Roberts provided any significant input in such work in a non-employed capacity. ASI is without any knowledge as to whether Counterclaimants Yearsley and/or Tiffany had any input into work done relative to the SAIC contract, and therefore denies such allegations or implications. Further, ASI admits that SBIR and SAIC contracts were eventually entered into, but denies any implication that such contracts resulted only or exclusively from work done by Counterclaimants Roberts, Yearsley, and/or Tiffany.

45. With regard to the allegations contained in paragraphs 66 and 67 of the Counterclaim, they are denied.

46. With regard to the allegations contained in paragraph 68 of the Counterclaim, ASI is without sufficient knowledge to admit or deny these allegations, and therefore they are denied.

47. With regard to the allegations contained in paragraph 69 of the Counterclaim, ASI is without sufficient knowledge to admit or deny these allegations, and therefore, they are denied. However, ASI specifically states that if Counterclaimants Roberts, Yearsley, and/or Tiffany did include proprietary IP into ASI's product, it was done so without ASI's knowledge or permission, and was in breach of contract with ASI, and was in bad faith.

48. With regard to the allegations contained in paragraphs 70 and 71 of the Counterclaim, they are denied.

### **AFFIRMATIVE DEFENSES**

49. The Counterclaim fails to state a claim upon which relief can be granted.

50. The Counterclaimants' demand for equitable relief is improper because Counterclaimants have an adequate remedy at law.

51. ASI has fully performed each term of the agreement between them and Counterclaimants, and Counterclaimants have received the full consideration agreed upon, and the transaction was carried out in full and in accordance with the agreement.

52. ASI's alleged conduct was authorized by statute, and in particular, I.C. §§ 4-801 et. seq., 44-2701 et. seq., and other applicable statutes.

53. Counterclaimants, or some of them, breached the contract which forms the basis of their cause of action. Further, Counterclaimants, or some of them, materially breached the contracts with ASI at issue by operating an entity which competed with their employer during the course, scope, and term of their employment.

54. Counterclaimants, or some of them, breached a fiduciary duty to ASI by operating in competition with ASI, despite the fact that they were employed by ASI pursuant to contract.

55. The Counterclaimants, or some of them, breached an implied covenant of good faith and fair dealing by acting in competition with their employer,

preventing their employer from obtaining clients in the market place, and by otherwise acting as alleged in the Counterclaim.

56. Counterclaimants were guilty of bad faith in connection with the events alleged in the Counterclaim.

57. The damages alleged in the Counterclaim reasonably could have been avoided by the Counterclaimants.

58. Counterclaimants have no cause of action because Counterclaimants were in default of their contracts with ASI at issue in this case.

59. ASI is not liable to Counterclaimants related to their discharge that forms the basis of the counterclaims because Counterclaimants were employees at will.

60. Counterclaimants have failed to join an indispensable party to this action.

61. Counterclaims have failed to take reasonable steps to mitigate the claimed or alleged damages.

62. Counterclaimants have failed to state with particularity all averments of fraud as required by I.R.C.P. 9.

63. At all times, Counterclaimants knew and were aware of the terms of their contracts with ASI, and any and all of the alleged damages or losses, if any, sustained by Counterclaimants arose or were caused by acting in contravention and breach of said contracts.



64. Counterclaimants are guilty of laches and unreasonable delay in bringing these counterclaims and in asserting any cause of action against ASI and that such laches and unreasonable delay were without good cause and substantially prejudiced ASI.

65. Counterclaimants cannot establish a prima facie case of any of their counterclaims.

66. Counterclaimants may not recover for both quantum meruit and unjust enrichment. (*See Barry v. Pacific West Construction, Inc.*, 140 Idaho 827 (2004)).

67. Any damages incurred by Counterclaimants must be set off against any damages caused by Counterclaimants as a result of their breach of contract.

68. Counterclaimants have unclean hands by their actions of breaching a contract with ASI. Thus, Counterclaimants cannot maintain an action in equity.

69. Counterclaimants' contract with Zilog was illegal and in violation and in breach of contract with ASI, and therefore, is unenforceable.

70. Counterclaimants are barred from recovery under the doctrines of waiver, estoppel, quasi estoppel.

71. ASI reserves the right to assert any additional affirmative defenses and matters in avoidance that may be disclosed in the course of additional investigation and discovery, including immunity, statutes of limitations, etc.

WHEREFORE, ASI prays that Counterclaimants take nothing by their Counterclaim, that the Counterclaim be dismissed and that ASI be awarded costs

of suit and attorney's fees pursuant to I.C. §§ 12-120, 12-121 and any other applicable statutes, and requests such and further relief as the Court deems just.

**ASI DEMANDS TRIAL BY JURY AS TO ALL ISSUES.**

DATED this 28 day of February, 2012.

ANDERSON, JULIAN & HULL LLP

BY



Brian K. Julian, Of the Firm  
Attorneys for Plaintiff

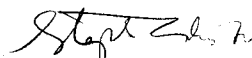
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28 day of February, 2012, I served a true and correct copy of the foregoing ANSWER TO COUNTERCLAIMS by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Russell G. Metcalf  
YOST & METCALF  
4 Ogden Avenue  
P.O. Box 1275  
Nampa, Idaho 83653  
Telephone: (208) 466-9222  
Facsimile: (208) 466-1981

☒ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile

*Attorneys for Defendants*



Brian K. Julian

ORIGINAL

Brian K. Julian, ISB 2360  
Stephen L. Adams, ISB 7534  
ANDERSON, JULIAN & HULL LLP  
C. W. Moore Plaza  
250 South Fifth Street, Suite 700  
Post Office Box 7426  
Boise, Idaho 83707-7426  
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E-Mail: [bjulian@ajhlaw.com](mailto:bjulian@ajhlaw.com)  
[sadams@ajhlaw.com](mailto:sadams@ajhlaw.com)

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4/14

MAR 26 2012

CHRISTOPHER D. RICH, Clerk  
By JAMIE RANDALL  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I – X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,

Counterclaimants,

Case No. CV OC 1123344

MOTION TO COMPEL

Vs.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

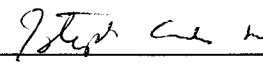
Counterdefendant.

COMES NOW, the above-entitled Plaintiff, by and through its attorneys of record, Anderson Julian & Hull LLP, and pursuant to I.R.C.P. 37(a), hereby files this Motion to Compel production of unencrypted and unredacted copies of documents requested in Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission to Defendant Sage Silicon Solutions, which were served on Defendant Sage on December 18, 2011. Documents produced were either encrypted or redacted, making them indecipherable. This Motion is Supported by the Affidavit of Stephen Adams in Support of Motion to Compel, filed contemporaneously herewith.

By this Motion and as is more fully set forth in the Affidavit filed herewith, Plaintiff certifies that a good faith effort has been made to confer with Plaintiff's counsel to secure disclosure of the necessary information without court action

DATED this 26 day of March, 2012.

ANDERSON, JULIAN & HULL LLP

By   
Brian K. Julian, Of the Firm  
Attorneys for Plaintiff

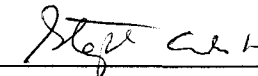
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20 day of March, 2012, I served a true and correct copy of the foregoing MOTION TO COMPEL by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Russell G. Metcalf  
YOST & METCALF  
4 Ogden Avenue  
P.O. Box 1275  
Nampa, Idaho 83653  
Telephone: (208) 466-9222  
Facsimile: (208) 466-1981

☒ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
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☐ Facsimile

*Attorneys for Defendants*



---

Brian K. Julian

ORIGINAL

Brian K. Julian, ISB 2360  
Stephen L. Adams, ISB 7534  
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E-Mail: [bjulian@ajhlaw.com](mailto:bjulian@ajhlaw.com)  
[sadams@ajhlaw.com](mailto:sadams@ajhlaw.com)

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4/14

MAR 26 2012

CHRISTOPHER D. RICH, Clerk  
By JAMIE RANDALL  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I – X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,

Counterclaimants,

Case No. CV OC 1123344

AFFIDAVIT OF STEPHEN ADAMS  
IN SUPPORT OF MOTION TO  
COMPEL

vs.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

STATE OF IDAHO )

) ss:

County of Ada )

STEPHEN ADAMS, having been first duly sworn upon oath, deposes and  
says:

1. That the statements contained herein are made of your Affiant's own  
personal knowledge and are true and correct to the best of his information.

2. Prior to filing the Complaint in this matter, on behalf of Plaintiff  
American Semiconductor, Inc. ("ASI"), our firm contacted Sage's counsel to  
discuss obtaining records for contract work done by Sage for Zilog. A true and  
correct copy of this letter is attached hereto as Exhibit "A" (Note: attach  
Metcalf.02)

3. In response, Sage's counsel provided several hundred pages of  
documents, most of which were redacted such that the information on them was  
indecipherable. A true and correct copy of some of these redacted documents is  
attached hereto as Exhibit "B" (including documents which have been bates  
marked as SAGE 36 – 37, 40, 101 – 102).

4. Through our communications with Sage's counsel, we were informed  
that Sage allegedly could not produce the requested documentation because of

concerns that there would be a violation of a non-disclosure agreement with Zilog. A copy of a letter from Sage's counsel discussing this issue, dated November 1, 2011, is attached hereto as Exhibit "C".

5. ASI needed unredacted copies of the documentation to determine how significantly the Sage employees had violated their employment and non-competition agreements with ASI, as the work done by Sage's employees for Zilog was done during their employment with ASI.

6. During the discussions with Sage's counsel, various options were discussed as to how to protect the documents at issue. However, we were informed that Zilog would not agree to any of these proposals, and the unredacted documents were not produced.

7. In part because ASI could not get the documentation it sought, ASI determined to file a lawsuit against Sage, ASI's former employees, and Zilog in an attempt to get the necessary information.

8. On or around December 18, 2011, Plaintiff American Semiconductor, Inc., ("ASI") served Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission to Defendant Sage Silicon Solutions on David Roberts, at the same time that the Complaint was served. Attached hereto as Exhibit "D" is a true and correct copy of Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission to Defendant Sage Silicon Solutions.

9. After extensions were granted to Sage, ASI received Defendant's Responses to Plaintiff's First Set of Interrogatories, Requests for Production and



Requests for Admission on or around January 26, 2012. Submitted with Sage's responses were a number of redacted and encrypted documents, on which the information contained was indecipherable. A true and correct copy of Sage's Response, with selected redacted documents, is attached hereto as Exhibit "E" (including documents which have been bates marked as SAGE 350 – 353).

10. In response to the production of these encrypted and redacted documents, I again contacted Sage's counsel to request unredacted and unencrypted copies. A number of options were discussed, including preparation of a stipulation for protective order to limit disclosure of the information.

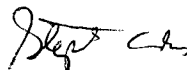
11. In response, Sage's counsel prepared a protective order which prevented ASI employees from reviewing the unencrypted and unredacted documents. A true and correct copy of the communication from Sage's counsel and the proposed protective order is attached hereto as Exhibit "F".

12. In response to this proposed protective order, on March 16, 2012, in an e-mail, I informed Sage's counsel that this proposal would not be sufficient, as we would likely name some of ASI's employees as experts in this matter, and they would need to be able to review the unencrypted and unredacted documents. In response, Sage's counsel indicated that they wanted a protective order in place before we argued about disclosure of the unencrypted and unredacted documents to ASI employees. A true and correct copy of this e-mail chain is attached hereto as Exhibit "G".

13. ASI employees and/or principals need to review the unencrypted and unredacted documents in order to determine the scope of damages ASI has suffered. Further, the documents are essential to determine whether ASI will serve the Complaint against Zilog, which to date has remained unserved. ASI has pushed this issue as quickly as possible, as the time limit for making the decision to serve Zilog will run in May, 2012.


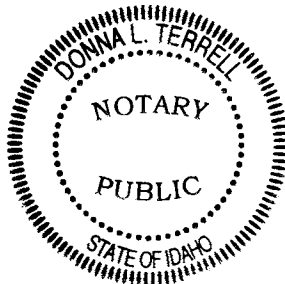
14. I certify that every attempt has been made to resolve this issue, in good faith, short of court action. However, the parties have not been able to reach an amenable solution which would allow ASI employees and principals to review the redacted documents. Therefore, this Motion to Compel has been brought to request that the Court compel production of the unredacted documents. ASI is agreeable that the documents be subject to a protective order, but cannot agree to a protective order which prohibits ASI employees and principals from looking at the documents.

FURTHER your Affiant saith naught.



Stephen Adams

SUBSCRIBED AND SWORN to before me this 26 day of March, 2012.



Notary Public for Idaho  
Residing at: Bonise, Idaho  
My Commission Expires: 4-28-2017

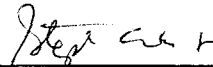
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26 day of March, 2012, I served a true and correct copy of the foregoing AFFIDAVIT OF STEPHEN ADAMS IN SUPPORT OF MOTION TO COMPEL by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Russell G. Metcalf  
YOST & METCALF  
4 Ogden Avenue  
P.O. Box 1275  
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Facsimile: (208) 466-1981

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☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile

*Attorneys for Defendants*



---

Brian K. Julian



# ANDERSON, JULIAN & HULL LLP

Attorneys and Counselors at Law

Robert A. Anderson  
Brian K. Julian  
Alan K. Hull  
Chris H. Hansen  
Phillip J. Collaer  
Michael P. Stefanic  
Amy G. White

Mark D. Sebastian  
Matthew O. Pappas  
Rachael M. O'Bar  
Stephen L. Adams  
Bret A. Walther  
Yvonne A. Dunbar  
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e-mail: [ajh@ajhlaw.com](mailto:ajh@ajhlaw.com)  
Web Site: [www.ajhlaw.com](http://www.ajhlaw.com)  
With Attorneys Licensed to Practice in  
Idaho, CO, OR, PA, UT and WA

October 5, 2011

Russell G. Metcalf  
YOST & Metcalf, PLLC  
17 E. Wyoming Avenue  
P.O. Box 385  
Homedale, ID 83628

Re: American Semiconductor v. Sage Silicon Solutions, et.al  
AJH No. 2322-1

Dear Russ:

My client has reviewed your correspondence. In order to determine the next step in this process, we need to review all Sage e-mails to its clients regarding or in any manner referring to work assignments or proposed work assignments. Additionally, my client is somewhat amazed at your clients' current response that absolutely no design work was done for any third party. Each of your clients were interviewed while employed at American Semiconductor and each admitted to performing design work, not just verification.

Consequently, my client requests a copy of all design files that have been transmitted to Zilog or any other third party. Without these documents, it is impossible to determine the extent of work performed and the potential damages caused by your clients' breach of their employment contract.

Time is of the essence. I would expect copies of these requested documents to be in my possession no longer than one week from today. As you are aware, my client truly holds all the cards as far as future legal proceedings. Further, all attorney fees that this firm expends in prosecuting this matter will



October 5, 2011

Page 2

become a debt owed by your clients. Thus, your complete and prompt cooperation is not only appreciated but essential to mitigate your clients' potential damages.

Very truly yours,

Brian K. Julian

BKJ/pk

cc: American Semiconductor

000142

# Fax Confirmation Report

Date/Time : OCT-05-2011 11:29AM WED  
Fax Number : 2083445510  
Fax Name : Anderson, Julian & Hull  
Model Name : Phaser 3635MFP

Total Pages Scanned: 3

No.	Remote Station	Start Time	Duration	Page	Mode	Job Type	Result
001	12083374854	10-05 11:28AM	00' 32	003/003	EC	HS	CP

## Abbreviations:

HS: Host Send	PL: Polled Local	CP: Completed	TS: Terminated by System
HR: Host Receive	PR: Polled Remote	FA: Fail	TU: Terminated by User
MS: Mailbox Save	WS: Waiting To Send	RP: Report	G3: Group3
MP: Mailbox Print	EC: Error Correct		



## ANDERSON, JULIAN & HULL LLP

Attorneys and Counselors at Law

Robert A. Anderson  
Brian K. Julian  
Alan K. Hull  
Chris H. Hansen  
Phillip J. Collaer  
Michael P. Stefanie  
Amy G. White

Mark D. Sebastian  
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e-mail: [ajh@ajhlaw.com](mailto:ajh@ajhlaw.com)  
Web Site: [www.ajhlaw.com](http://www.ajhlaw.com)  
With Attorneys Licensed to Practice in  
Idaho, CO, OR, PA, UT and WA

## FACSIMILE COVER SHEET

**CONFIDENTIALITY NOTICE** - This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents.

**To:** Russ Metcalf **Facsimile:** 208-337-4854  
**From:** Brian K. Julian **Operator:** Receptionist

### Document(s) Being Transmitted:

**Date:** October 5, 2011

**Original to Be Sent Via Regular Mail:** Yes \_\_\_ No ☒ X

This message consists of \_\_\_ page(s), including this cover page. Please check to see if you received the correct number of pages; if not, kindly contact us immediately either by return facsimile or by telephone.

File No.: 2322-2

File Name: American Semiconductor v Sage

**Comments:**

---

**From:** "David Staab" <DStaab@zilog.com>  
**To:** "Bill Tiffany" <wtiffany@sagesiliconsolutions.com>  
**Cc:** [REDACTED]  
**Sent:** Thursday, March 10, 2011 11:33 AM  
**Subject:** RE: Uart0/1Test1OCD BreakDetect failure

Hi Bill, [REDACTED],

Thanks.

What is the behavior of [REDACTED], is it to report only BreakDetect if both BreakDetect and FramingError are detected?

If yes, then is there any reason to change this behavior?

Thanks.

Regards,  
David

-----Original Message-----

**From:** [wtiffany@msn.com](mailto:wtiffany@msn.com) [mailto:wtiffany@msn.com] On Behalf Of Bill Tiffany  
**Sent:** Wednesday, March 09, 2011 8:54 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED] David Staab; Gyle Yearsley  
**Subject:** Uart0/1Test1OCD BreakDetect failure

In looking at the Uart0Test1OCD failure, I saw the test was failing the "BreakTest" task. The failure was due to the fact that a FramingError is being reported along with the BreakError. You can see in the BreakTest task (contained in test.v file), that the task was changed (correctly I believe) at some point to expect that the FramingError should not be reported when a BreakError occurs.

A BreakDetect occurs when a string of "0's" lasting longer than a normal character is received. A FramingError occurs when a "0" is detected when the Stop bit should occur. So a "Break" will naturally cause a "FramingError" to be reported unless the code checks that there is not also a Break when a FramingError is detected.

It looks like when the [REDACTED] mode was added the "~BreakCondition" was dropped from the FramingError equation though I believe it should still be there. The code in question is below.

The product spec doesn't explicitly say whether FramingError will assert when a Break occurs, but I believe we decided at some point that it was better not to report a FramingError when a Break occurs as this would complicate the error handling routines in software.

Let me know if this is not clear,  
Bill



```

//*****
//*****
//*****
//*****
//*****
//*****
//*****
//*****
//*****
//*****

```

[illegible]



temporary bandaid to the movement of the [REDACTED] option bit.

>>

>> I made some changes to the overrun code in the [REDACTED] block. I believe it is working properly now, but the Uart1Test1OCD is now failing with the wrong status in the overrun test.... I think it is correct now, but need your review Bill.

>>

>> the [REDACTED] [REDACTED] and [REDACTED] all fail in a TIMEOUT... I think there may indeed be another option bit that might need to be corrected to make the [REDACTED] and [REDACTED] wrap around modes work properly again, Bill can you look at this?

>>

>> Thanks,

>>

>> see/hear you all in a minute.

>>

>> I have done nothing to the [REDACTED] set of tests, once the [REDACTED] set is golden, it will be easy to fix that set as well.

>>

>>

>> my checkin stuff:

>>

>>

>>

>> [REDACTED] de

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

>> Principal Design Engineer

>> [REDACTED]

>> ... a division of IXYS Corporation

>> [REDACTED]

>> [REDACTED]

>> [REDACTED] (c)

[illegible]

## > INDIRECT ADDRESSING OF

> If we are going to use indirect addressing I think the simplest approach  
> would be to take their design as is and add a wrapper which provides  
> indirect access as follows. The following hex numbers are the register  
> offset from wherever we place the [redacted] the [redacted] space (would require  
> 8 bytes of address space on the Register Bus).

[illegible]



# YOST & METCALF, PLLC

## ATTORNEYS AND COUNSELORS

### NAMPA OFFICE

William F. Yost, ISB 1275  
E-mail: bud@wyostlaw.com  
Russell G. Metcalf, ISB 7024  
E-mail: russell@wyostlaw.com

### HOMEDALE OFFICE

Russell G. Metcalf, PLLC  
Russell G. Metcalf, ISB 7024  
E-mail: rmetcalf@cableone.net

---

### SENT VIA E-MAIL AND REGULAR MAIL

November 1, 2011

Anderson, Julian & Hull, LLP  
Brian K. Julian  
250 South Fifth Street, Suite 700  
Post Office Box 7426  
Fax No.: (208) 344-5510

**Re: American Semiconductor v. Sage Silicon Solutions, LLC, et al.**

Dear Brian:

This letter is in response to your letter dated October 25, 2011, wherein you discuss your concerns regarding the documentation that was provided to you by my clients. Please know that my clients are still very concerned about this matter and are doing all that they can to assist in this matter – short of disclosing information that might expose them to liability from third parties. Please consider the following:

First, my clients have instructed me to reiterate that Sage Silicon Solutions is no longer operating or conducting any business and, for all intents and purposes, has been shut down.

Second, all money that belongs to Sage Silicon Solutions or that is owed to Sage Silicon Solutions has been undistributed and is being held in trust as collateral to resolve this matter.

Third, and most importantly, my clients are not able to comply with your demand to provide the information previously provided to you in unredacted form. Brian, my clients are extremely concerned that if they disclose the documentation in unredacted form, they will expose themselves to potential liability from Zilog – as the redacted information constitutes proprietary information and technology belonging to Zilog. Furthermore, a thorough review of the redacted documentation provides sufficient information for American Semiconductor to determine the type and scope of work that was being performed by my clients.

Finally, Brian, we are well aware of your client's right to file a lawsuit. You have also made it very clear that whether you file a lawsuit or not, your client intends to demand

---

4 Ogden Avenue, P.O. Box 1275, Nampa, ID 83653 Telephone: (208) 466-9222 Facsimile: (208) 466-1981  
17 E. Wyoming Avenue, P.O. Box 385, Homedale, ID 83628 Telephone: (208) 337-4945 Facsimile: (208) 337-4946

EXHIBIT

000149

November 1, 2011

Page 2 of 2

reimbursement of all attorney fees incurred to investigate this matter. Your reference to potential lawsuits, damages, costs and reimbursements strike at the very heart of this matter. As we have stated previously, my clients are not in a financial position to pay large damages nor to reimburse significant attorney fees and costs. In fact, all of them, except one, are currently unemployed. Accordingly, although my clients are very concerned, threats of lawsuits, damages, costs and reimbursements do very little to help resolve this matter.

Brian, we are still very hopeful that this matter can be resolved without resort to expensive and time consuming litigation. We hope that you will understand and consider the concerns set forth in this letter and thank you for your consideration of the same.

Very truly yours,  
YOST & METCALF, PLLC



Russell G. Metcalf

RGM/sms

cc: David A. Roberts  
Gyle D. Yearsley  
William Tiffany  
Evelyn Perryman  
Russell Lloyd

Brian K. Julian, ISB 2360  
Stephen L. Adams, ISB 7534  
ANDERSON, JULIAN & HULL LLP  
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250 South Fifth Street, Suite 700  
Post Office Box 7426  
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Facsimile: (208) 344-5510  
E-Mail: [bjulian@ajhlaw.com](mailto:bjulian@ajhlaw.com)  
[sadams@ajhlaw.com](mailto:sadams@ajhlaw.com)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSS LLOYD, BILL  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I – X,

Defendants.

Case No.

PLAINTIFF'S FIRST SET OF  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION AND  
REQUESTS FOR ADMISSION TO  
DEFENDANT SAGE SILICON  
SOLUTIONS

TO: DEFENDANT SAGE SILICON SOLUTIONS, LLC

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby requests that you  
answer, under oath, the following Interrogatories, Requests for Admission, and  
Requests for Production within thirty (30) days of service hereof, in accordance with  
provisions of Rules 33, 34 and 36 of the Idaho Rules of Civil Procedure.

PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRO  
TO DEFENDANT SAGE SILICON SOLUTIONS - 1



## INSTRUCTIONS AND DEFINITIONS

In answering the Interrogatories, furnish all information available to you, including information in the possession of your attorneys (and investigators, experts, etc., retained by you and your attorneys), not merely information known of your own personal knowledge. If you cannot respond to the following in full, after exercising due diligence to secure the information to do so, so state, then respond to the extent possible, specifying your inability to respond to the remainder, and stating whatever information and knowledge you have concerning the unanswered portion.

You may respond to the Requests for Production of Documents by producing for inspection and/or reproduction the originals or true and correct copies of the documents and items listed below, in whatever form, whether electronic, written, Xeroxed, filmed or otherwise, at the offices of Anderson, Julian & Hull LLP, 250 South 5<sup>th</sup> Street, P. O. Box 7426, Boise, Idaho 83707-7426, within thirty (30) days of service hereof.

These Interrogatories and Requests for Production are deemed continuing, and your Answers and Responses thereto are to be supplemented as additional information and knowledge becomes available or known to you.

The following definitions will be used with respect to these Interrogatories and Requests:

1. The word "You" and/or "Your" refers to the parties addressed herein, as well as the parties' employees, agents, attorneys, representatives, servants, and any expert witnesses expected to testify at trial.

2. The word "Document" means any written, typed, graphic or printed matter, in its entirety, including any addenda, supplements, amendments, revisions, exhibits, and appendices thereto, in its original form (or copies thereof where bearing notations, memoranda or other written information not on the original) including, but not limited to, books, pamphlets, brochures, notebooks, correspondence, telegrams, notes or taped or sound recordings of any type of conversation or meeting or conference, notes or tape or sound recordings of any type of statement of witnesses, minutes of meetings, reports, photographs, memoranda, interoffice or intraoffice communications, medical records, medical reports, chart notes, studies, analyses, results of investigations, reviews, contracts, licenses, agreements, ledgers, books of account, vouchers, bank checks and drafts, invoices, charge slips, hotel charges, receipts, bills, working papers, statistical records, costs sheets, stenographer's notebooks, desk calendars, appointment books, diaries, time sheets or logs, maps, computer input data, computer output data, computer runs, work sheets or work papers or other materials, including all such defined documents submitted to your accountants or attorneys or submitted by your accountants or attorneys to you, or papers similar to any of the foregoing.

3. The word "person" means any natural person, partnership, firm or corporation or any other type of business or legal entity, its agents, employees and representatives.

4. If any document or portion thereof, which is responsive to any request herein, is or will be withheld from production, inspection or copying, please fully identify such document or portion thereof in your response, in accordance with definition 5 below, and fully describe in your response, the reason it is or will be withheld.

5. "Identify" or "identification" means:

- (a) In each instance wherein you are asked to "identify" or describe a document, your description should include, but not be limited to, the following:
  - (1) The name, address, telephone number, occupation, job title and employer of the present custodian of the document;
  - (2) The date of the making of the document, the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence;
  - (3) The identity of author;
  - (4) The title, date, and subject matter of the document;
- (b) With respect to a verbal communication by personal means, identify means a complete statement setting forth the date, the approximate time and place, the name and address of each person present, whether any conversation was recorded and, if so, the name and address of the person who recorded it and the name and address of the person who has custody or possession of such recording, and whether any notes or memoranda were made of any conversations and, if so, the name and address of the person who made such notes or memoranda and the name and address of each person who has custody or possession of the original notes or memoranda.
- (c) With respect to a telephone conversation, "identify" means a complete statement setting forth the date, the approximate time, the name of the person initiating the call, the location from which the call was placed, the words spoken or the substance of what was said by the person initiating the call and by the person called, whether anyone else listened in on one or both sides of such



telephone conversation and, if so, the name and address of such person, whether such conversation was recorded and, if so, the name and address of the person who recorded it and the name and address of the person who has custody or possession of such recording and whether any notes or memoranda were made of such conversation and, if so, the name and address of each person who has custody or possession of the original notes or memoranda.

- (d) With respect to a document for which you claim a privilege, "Identify" means the name of the person who prepared it, the name of the person who signed it or in whose name it was issued, the name of each person to whom it was addressed or circulated, the nature and substance of the writing and its title, if any, its date, and if it bears no date, the date when it was prepared, the physical location of the original and any copies of which you are aware, the name and address of each person having custody or control of the document, and the name and number of the file, if any, in which it is contained and the basis for the privilege for which you claim.
- (e) When used in reference to a person, "Identify" means the person's full name, state of incorporation (if applicable), last known business address, last known home address (if applicable), last known business, profession, or occupation, last known job title, list of officers, directors, agents, representatives and employees (if applicable), and relationship to the answering Defendant.

6. The term "Knowledge" includes firsthand knowledge and information derived from any other source, including but not limited to hearsay knowledge.

7. The word "Occurrence," "Incident" or "Accident" refers to the alleged events that form the subject matter of this pending action, as more particularly described herein, set forth or related to Plaintiff's Complaint on file herein.

8. The word "Relate," "Relates" or "Relating" include, but are not limited to, referencing, evidencing, reflecting, embodying, showing, describing, memorializing, discussing, pertaining to, containing reference to and/or mentioning either directly and/or indirectly.

9. "Describe" or "Description" means to set forth all facts which exhaust your information, knowledge, and belief with respect to the subject matter of the discovery request.

10. Use of the singular form shall be deemed to include the plural and vice versa. Use of either the masculine or feminine pronoun, except when referring to a named Person, shall be deemed to construe either disjunctively or conjunctively so as to permit the broadest scope possible.

## **INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify, by name, address and telephone number, any Person, known to either You or Your attorney, having Knowledge of relevant facts Relating to the Occurrence, be it pertinent to damages and/or liability, stating such facts as to which any such Identified Person has Knowledge.

**INTERROGATORY NO. 2:** Please state the names, addresses and telephone numbers of all persons You intend to call as factual witnesses at the trial of this case. If any Identified Person is not also included in answer to Interrogatory No. 1, please state the general nature of the facts to which they will testify.

**INTERROGATORY NO. 3:** State the name and address of each Person(s) whom You expect to call as an expert witness at trial, specifically stating the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, the qualifications and background of such Identified expert (a produced exhibit Curriculum Vitae will be a satisfactory answer to this Interrogatory), and pursuant to Rule 705, *I.R.E.* and *I.R.C.P.* 26, set forth and disclose each and every underlying fact or data which the expert has or will rely upon in formulating and/or basing his or her opinion(s) or inference(s) thereon, as well as the opinions to be expressed and the reasons therefore.

**INTERROGATORY NO. 4:** Please identify, in full and complete detail, each and every Document, writing or other physical evidence which You intend or expect to utilize in the trial of this matter, specifying the Identity of each exhibit and what it depicts and the Person preparing such exhibit or the source of this exhibit.

**INTERROGATORY NO. 5:** Please Identify each and every statement, oral or written, (including any Document or record that in any way memorializes or Relates to a conversation), made by Yourself or any Person, agent, or representative of Yours or any other witness to the facts of the alleged Incident, other than given in discovery proceedings, which Relates to any of the issues involved in this action, including but not limited to the events of the Incident, objects or things involved in the Incident or damages alleged as a result of the Incident. As to each such statement, Identify the Person making and/or recording it, the date made, the form of the statement, the present custodian and the subject matter of the statement.

**INTERROGATORY NO. 6:** Have You entered into a release, settlement, agreement, compromise, covenant or any other type of agreement with any Person, firm or corporation as a result of the Incident referred to in Your Complaint? If so, please set forth the name and address of the Person, firm or corporation, the type of agreement or instrument by which You compromised, settled or released any claims, the date thereof, and the amount of consideration received or given for the same.

**INTERROGATORY NO. 7:** Please Identify any insurance company which has entered into an insurance agreement with Sage, its agents or employees, under which any Person carrying on an insurance business is/was liable to satisfy part or all of Plaintiff's claims, stating the policy number, coverage dates, type of policy, and applicable limits. In the alternative, and pursuant to *I.R.C.P.* 33(c), this Interrogatory may be answered by producing a copy of the applicable declaration page (if any), along with any other documentation indicating a reservation of rights under such policy, or other lack of coverage.

**INTERROGATORY NO. 8:** Name and Identify all Persons or entities who have or plan to investigate(d) the cause and circumstances of the instant allegations of the Plaintiff's Complaint.

**INTERROGATORY NO. 9:** Please Identify each and every employee who has worked for or been employed by Sage Silicon Solutions since it was organized.

**INTERROGATORY NO. 10:** Please Identify each and every company, corporation, person, or other entity to which You or Your employees provided services, whether or not payment was received for such services, since Sage Silicon Solutions was organized.

**INTERROGATORY NO. 11:** Please Identify each and every company, corporation, person, or other entity to which You or Your employees offered to provide services or with whom You or Your employees otherwise solicited or offered to form a contract, partnership, or other business relationship since Sage Silicon Solutions was organized, Identifying when such contact occurred and with whom such communications occurred.

**INTERROGATORY NO. 12:** Please Identify each and every computer program, software application, hardware device (including computers, PDA's, smart phones, tablets, or similar devices) and all related software license agreements utilized by You or Your agents and employees in providing services to third-parties other than Plaintiff, including Zilog.

**INTERROGATORY NO. 13:** Please Identify each and every project, product, or other program for which You, Your employees and agents provided services related to such project, product or other program, specifying what services were provided, to

whom, and how much compensation you were entitled to receive as a result of such services.

**INTERROGATORY NO. 14:** Please Identify each and every program for which You, Your employees and agents provided proposals related to design or design services, specifying what intellectual property and services were proposed, to whom the proposal was made, and the proposed compensation you were to receive as a result of such program.

**INTERROGATORY NO. 15:** Please Identify the Zilog product for which Sage provided services, including setting forth the name of the product and the purpose for which it is to be used.

**INTERROGATORY NO. 16:** Please Identify each and every current or former Zilog employee with which You, Your employees and agents communicated, and identify any such persons who were informed that David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, and/or Evelyn Perryman were employed by American Semiconductor.

**INTERROGATORY NO. 17:** Please state Your gross income, net income, and all payments made to You by third-parties, including when such payments were made and in what amounts, including Zilog, since Sage Silicon Solutions was organized.

### **REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1.:** Please produce each and every abstract, white paper, proposal, request for quotation, contract, agreement, service agreement, partnership agreement, or other document tending to show a business

relationship with a third-party other than Plaintiff, including Zilog, since Sage Silicon Solutions was organized.

**REQUEST FOR PRODUCTION NO. 2.**: Please produce copies or originals of all design data including, but not limited to, design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs utilized by You, Your agents and/or employees in providing services to third-parties other than Plaintiff, including Zilog.

**REQUEST FOR PRODUCTION NO. 3.**: Please produce each and every letter, e-mail, fax, text message, instant message, or other document showing communications between You, Your employees and agents, and any third-party, including Zilog, since Sage Silicon Solutions was organized.

**REQUEST FOR PRODUCTION NO. 4.**: Please produce each and every letter, e-mail, fax, text message, instant message, or other document showing communications between You, Your employees and agents, and Plaintiff, its employees and agents, since Sage Silicon Solutions was organized.

**REQUEST FOR PRODUCTION NO. 5.**: Please produce a copy of each and every version of Your webpage, any advertising brochures or materials, or other Documents tending to show what services were offered by Sage Silicon Solutions.

**REQUEST FOR PRODUCTION NO. 6.**: Please produce all statements previously made by You, Your employees or agents, the Plaintiff, Plaintiff's agents or employees, any witness or any other statement or report made by any other Person which in any way refers or Relates to the facts of the subject Incident and Plaintiff's injuries and claim for damages, other than those received in production of documents

from Plaintiff. Included in this Request is production of any statement Identified in Your Answer to Interrogatory No. 5.

**REQUEST FOR PRODUCTION NO. 7.:** Please produce each photograph, print, negative, videotape, sketch, diagram or drawing or other such similar Document in Your possession or control which in any way Relates to the subject of this Incident.

**REQUEST FOR PRODUCTION NO. 8.:** Please produce each statement, diary, note, engineering notebook, memorandum, calendar, day planner or other Document upon which are recorded the recollections, impressions or opinions of any Person, other than Your attorney, who has Knowledge of the facts of the subject Incident.

**REQUEST FOR PRODUCTION NO. 9.:** Please produce each exhibit You intend to offer into evidence or use for rebuttal or impeachment purposes, at the trial of this action. Included in this Request is production of any item Identified in Your Answer to Interrogatory No. 4.

**REQUEST FOR PRODUCTION NO. 10.:** Please produce federal income tax returns filed by You since Sage Silicon Solutions was organized.

**REQUEST FOR PRODUCTION NO. 11.:** Please produce copies of each federal and state tax form prepared by You, Your agents and/or employees, including but not limited to forms for payment of wages to employees (such as W2 forms), Form 940, and Form 941.

**REQUEST FOR PRODUCTION NO. 12.:** Please produce records of any and all payments received by You from third-parties other than Plaintiff, including Zilog, pursuant to contract or in exchange for services provided by You, Your agents or employees.

**REQUEST FOR PRODUCTION NO. 13.** Please produce licenses or ownership records for each and every computer program, software application, hardware device utilized by You or Your agents and employees in providing services to third-parties other than Plaintiff, including Zilog.

**REQUEST FOR PRODUCTION NO. 14.** Please produce any and all records of payments made to Your agents, employees, managers or members, whether in the form of salaries, wages, disbursements, stock dividends, or in any other form.

**REQUEST FOR PRODUCTION NO. 15.** Please produce a curriculum vitae or any other such like or similar Document for any of the individuals identified by You in Your Answer to Interrogatory No. 3, above.

**REQUEST FOR PRODUCTION NO. 16.** Please produce a copy of any and all reports or other such similar Documents generated, reviewed or utilized by the Persons identified in Your Answer to Interrogatory No. 3, above.

**REQUEST FOR PRODUCTION NO. 17.** Please produce a copy of any and all insurance policies, reservation of rights letters, denials of coverage, or other documents related to any insurance policies which may apply to Plaintiff's claims, including any documents Identified in the Answer to Interrogatory No. 7, above.

**REQUEST FOR PRODUCTION NO. 18.** Please produce a copy of any and all reports or other such similar Documents and/or items of tangible evidence described, identified, referred to, reviewed or inspected by You in preparing Your Answers to Interrogatories.



## **REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1.:** Please admit that the document attached hereto as Exhibit "A" is a true and correct copy of the Certificate of Organization for Sage Silicon Solutions, LLC.

**REQUEST FOR ADMISSION NO. 2.:** Please admit that Sage Silicon Solutions, LLC, was organized on or about January 28, 2010.

**REQUEST FOR ADMISSION NO. 3.:** Please admit that the members and managers of Sage Silicon Solutions, LLC, include David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, Evelyn Perryman.

**REQUEST FOR ADMISSION NO. 4.:** Please admit that at the time Sage Silicon Solutions LLC was organized, David Roberts was employed by Plaintiff American Semiconductor.

**REQUEST FOR ADMISSION NO. 5.:** Please admit that at the time Sage Silicon Solutions LLC was organized, Gyle Yearsley was employed by Plaintiff American Semiconductor.

**REQUEST FOR ADMISSION NO. 6.:** Please admit that at the time Sage Silicon Solutions LLC was organized, Russell Lloyd was employed by Plaintiff American Semiconductor.

**REQUEST FOR ADMISSION NO. 7.:** Please admit that at the time Sage Silicon Solutions LLC was organized, William Tiffany was employed by Plaintiff American Semiconductor.

**REQUEST FOR ADMISSION NO. 8.:** Please admit that Evelyn Perryman was employed by American Semiconductor beginning on or around April 12, 2010.

**REQUEST FOR ADMISSION NO. 9.:** Please admit that at the time Evelyn Perryman was hired by American Semiconductor, she did not inform American Semiconductor that she was a manager or member of Sage Silicon Solutions, LLC.

**REQUEST FOR ADMISSION NO. 10.:** Please admit that Sage Silicon Solutions LLC provided services to Zilog.

**REQUEST FOR ADMISSION NO. 11.:** Please admit that Sage Silicon Solutions LLC provided design services to Zilog.

**REQUEST FOR ADMISSION NO. 12.:** Please admit that Sage Silicon Solutions LLC received payment in exchange for services provided to Zilog.

**REQUEST FOR ADMISSION NO. 13.:** Please admit that none of the payments made by Zilog to Sage Silicon Solutions LLC have been forwarded, sent, provided, or otherwise disbursed to Plaintiff American Semiconductor.

**REQUEST FOR ADMISSION NO. 14.:** Please admit that Sage Silicon Solutions LLC sought to provide services to other third-parties other than Plaintiff American Semiconductor and Zilog.

**REQUEST FOR ADMISSION NO. 15.:** Please admit that the document attached hereto as Exhibit "B" is a true and correct copy of portions of Sage Silicon Solutions LLC's webpage.

**REQUEST FOR ADMISSION NO. 16.:** Please admit that the document attached hereto as Exhibit "C" is a true and correct copy of portions of Plaintiff American Semiconductor's webpage.

**REQUEST FOR ADMISSION NO. 17.:** Please admit that language utilized on Sage Silicon Solutions' webpage was copied from American Semiconductor's webpage.

**REQUEST FOR ADMISSION NO. 18.:** Please admit that American Semiconductor never gave Sage Silicon Solutions permission to use on Sage Silicon Solutions' webpage the language "In cooperation with American Semiconductor Inc."

**REQUEST FOR ADMISSION NO. 19.:** Please admit that Sage Silicon Solutions' agents and/or employees utilized American Semiconductor's equipment and property, including without limitation computers, bandwidth, internet connection, etc., in providing the services Sage Silicon Solutions rendered to Zilog and/or other third parties.

**REQUEST FOR ADMISSION NO. 20.:** Please admit that Sage Silicon Solutions' agents and/or employees spent time working on projects for Zilog and/or other third parties when they were being paid to work on projects for American Semiconductor.

**REQUEST FOR ADMISSION NO. 21.:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff of the organization or existence of Sage Silicon Solutions.

**REQUEST FOR ADMISSION NO. 22.:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff that Sage Silicon Solutions was providing services to Zilog.

**REQUEST FOR ADMISSION NO. 23.:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff that Sage Silicon Solutions was receiving payments from Zilog.

**REQUEST FOR ADMISSION NO. 24.:** Please admit that Sage Silicon Solutions was operating in competition with Plaintiff.

**REQUEST FOR ADMISSION NO. 25.:** Please admit that Sage Silicon Solutions sought to provide services to entities which could have obtained the same or similar services from Plaintiff.

**FURTHER INTERROGATORIES**

**INTERROGATORY NO. 18:** Please Identify each and every Person who aided in the completion of the above Answers and Responses on behalf of Sage Silicon Solutions, their position or relationship to Sage Silicon Solutions, and any other names or aliases they have used.

**INTERROGATORY NO. 19:** For each of the above Requests for Admission to which you responded with any answer but an unqualified admission, please set forth every fact which supports, identify every document which supports and identify every witness who has knowledge to support such denial or qualified admission.

DATED this \_\_\_\_ day of March, 2012.

ANDERSON, JULIAN & HULL LLP

By \_\_\_\_\_  
Brian K. Julian, Of the Firm  
Attorneys for Plaintiff

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FAX: (208) 466-1981  
Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS, GYLE  
YEARSLEY, RUSS LLOYD, BILL TIFFANY,  
EVELYN PERRYMAN, and Defendants DOES  
I - X,

Defendants.

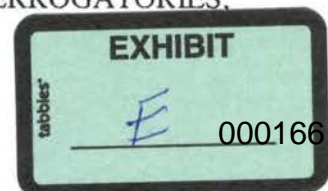
Case No. CV-OC-2011-23344

DEFENDANTS' RESPONSES TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION AND REQUESTS  
FOR ADMISSION

COMES NOW the Defendants, David Roberts, Gyle Yearsley, Bill Tiffany and Sage Silicon Solutions, LLC, by and through their counsel of record, Russell G. Metcalf, Yost & Metcalf, PLLC, and in response to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission provide as follows:

**INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify, by name, address and telephone number, any Person, known to either You or Your attorney, having Knowledge of relevant facts Relating to DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR - 1



the Occurrence, be it pertinent to damages and/or liability, stating such facts as to which any such Identified Person has Knowledge.

**RESPONSE TO INTERROGATORY NO. 1:** Defendants identify the following:

1. David A. Roberts, c/o Yost & Metcalf, PLLC, 4 Ogden Avenue, P.O. Box 1275, Nampa, Idaho 83653. Mr. Roberts is a member of the Defendant, Sage Silicon Solutions, LLC, and was an employee of the Plaintiff, ASI, and as such, has knowledge regarding facts and circumstances related to Sage and ASI.
2. Gyle D. Yearsley, c/o Yost & Metcalf, PLLC, 4 Ogden Avenue, P.O. Box 1275, Nampa, Idaho 83653. Mr. Yearsley is a member of the Defendant, Sage Silicon Solutions, LLC, and was an employee of the Plaintiff, ASI, and as such, has knowledge regarding facts and circumstances related to Sage and ASI.
3. William Tiffany, c/o Yost & Metcalf, PLLC, 4 Ogden Avenue, P.O. Box 1275, Nampa, Idaho 83653. Mr. Tiffany is a member of the Defendant, Sage Silicon Solutions, LLC, and was an employee of the Plaintiff, ASI, and as such, has knowledge regarding facts and circumstances related to Sage and ASI.
4. Russell Lloyd, c/o Yost & Metcalf, PLLC, 4 Ogden Avenue, P.O. Box 1275, Nampa, Idaho 83653. Mr. Lloyd is a member of the Defendant, Sage Silicon Solutions, LLC, and is an employee of the Plaintiff, ASI, and as such, has knowledge regarding facts and circumstances related to Sage and ASI.
5. Evelyn Perryman, c/o Yost & Metcalf, PLLC, 4 Ogden Avenue, P.O. Box 1275, Nampa, Idaho 83653. Ms. Perryman is a member of the Defendant, Sage Silicon Solutions, LLC, and was an employee of the Plaintiff, ASI, and as such, has knowledge regarding facts and circumstances related to Sage and ASI.

6. Dale Wilson. Mr. Wilson is an employee of ASI and worked closely with the Defendants and as such has knowledge regarding the subject matter of this lawsuit.
7. Douglas Hackler. Mr. Hackler is the President and CEO of ASI and worked closely with the Defendants and as such has knowledge regarding the subject matter of this lawsuit.
8. Rich Chaney. Mr. Chaney is an employee of ASI and worked closely with the Defendants and as such has knowledge regarding the subject matter of this lawsuit.
9. David Staab, 1590 Buckeye Drive, Milpitas, CA 95035-7418, Phone: (408) 457-9000. Mr. Staab is the vice president of R&D and MCU Architecture for Zilog, Inc., a company with whom the Defendant Sage Silicon Solutions did business. Mr. Staab has knowledge of work that was performed by the Defendants for Zilog.
10. Theo Verhoeven, 1590 Buckeye Drive, Milpitas, CA 95035-7418, Phone: (408) 457-9000. Mr. Verhoeven is an employee of Zilog, Inc., and has knowledge regarding the work that was performed by the Defendants for Zilog.

As this matter is in the early stages of litigation and discovery has just commenced, Defendants will seasonably supplement their responses to this Interrogatory as and if additional persons are discovered.

**INTERROGATORY NO. 2:** Please state the names, addresses and telephone numbers of all persons You intend to call as factual witnesses at the trial of this case. If any Identified Person is not also included in answer to Interrogatory No. 1, please state the general nature of the facts to which they will testify.

**RESPONSE TO INTERROGATORY NO. 2:** Please see Defendants' Response to Interrogatory No. 1, *supra*. As this matter is in the early stages of litigation and discovery has

just commenced, Defendants will seasonably supplement their responses to this Interrogatory as and if additional persons are discovered.

**INTERROGATORY NO. 3:** State the name and address of each Person(s) whom You expect to call as an expert witness at trial, specifically stating the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, the qualifications and background of such Identified expert (a produced exhibit Curriculum Vitae will be a satisfactory answer to this Interrogatory), and pursuant to Rule 705, *I.R.E.* and *I.R.C.P.* 26, set forth and disclose each and every underlying fact or data which the expert has or will rely upon in formulating and/or basing his or her opinion(s) or inference(s) thereon, as well as the opinions to be expressed and the reasons therefore.

**RESPONSE TO INTERROGATORY NO. 3:** As this matter is in the early stages of litigation, Defendants have not yet determined whom they will call as an expert witness in this matter. Defendants will seasonably supplement their responses to this Interrogatory pursuant to the Idaho Rules of Civil Procedure and any applicable scheduling order as and if they determine to call any expert witnesses.

**INTERROGATORY NO. 4:** Please identify, in full and complete detail, each and every Document, writing or other physical evidence which You intend or expect to utilize in the trial of this matter, specifying the Identity of each exhibit and what it depicts and the Person preparing such exhibit or the source of this exhibit.

**RESPONSE TO INTERROGATORY NO. 4:** Please see all documents attached hereto as exhibits in response to Plaintiff's Requests for Production of Documents. Defendants reserve the right to use as demonstrative exhibits or to offer or attempt to offer into evidence any or all of the exhibits referred to below and produced in response to Plaintiff's Requests for

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,  
REQUESTS FOR PRODUCTION AND REQUESTS FOR - 4



Production of Documents. Plaintiff can ascertain the information requested in this Interrogatory by reviewing the exhibits produced. Defendants also reserve the right to use any documents produced or identified by Plaintiff in response to any discovery requests served upon Plaintiff by the Defendants during the pendency of this matter.

**INTERROGATORY NO. 5:** Please Identify each and every statement, oral or written, (including any Document or record that in any way memorializes or Relates to a conversation), made by Yourself or any Person, agent, or representative of Yours or any other witness to the facts of the alleged Incident, other than given in discovery proceedings, which Relates to any of the issues involved in this action, including but not limited to the events of the Incident, objects or things involved in the Incident or damages alleged as a result of the Incident. As to each such statement, Identify the Person making and/or recording it, the date made, the form of the statement, the present custodian and the subject matter of the statement.

**RESPONSE TO INTERROGATORY NO. 5:** Defendants object to this interrogatory on the basis that it is overbroad and to the extent that it seeks information that is protected by the attorney-client privilege and or the attorney work product doctrine. Subject to and without waiving these objections, Defendants provide the following:

1. Prior to his employment with ASI, Defendant, David Roberts, had numerous conversations with Dale Wilson and/or Rich Chaney in person and by e-mail regarding various subjects related to Sage Silicon Solutions, Sage's work and Sage's website. Prior to his employment with ASI, Mr. Roberts also had discussions with Dale Wilson and/or Rich Chaney regarding the preparation of various SBIR and SAIC proposals for ASI. Prior to the employment of the Defendants by ASI, the Defendant Roberts had verbal and email discussions with Dale Wilson regarding the

ability of Sage and its members to continue to conduct business as employees of ASI and the purpose of the employment by ASI of the Defendants. True and correct copies of e-mail correspondence and other notes and/or memoranda will be provided in response to Plaintiff's Requests for Production of Documents, *infra*.

2. Prior to their employment with ASI, the Defendants Roberts, Yearsley and Tiffany (as well as Lloyd and Perryman who have not been served) executed a non-disclosure agreement (the "NDA") with ASI. True and correct copies of the NDA will be provided in response to Plaintiff's Request for Production of Documents, *infra*.
3. Prior to their employment with ASI, the Defendants met with ASI to present a test chip to be produced by Sage and the Defendants
4. Immediately prior to the commencement of Defendants' employment with ASI, Defendants, Roberts and Yearsley, met with Dale Wilson and Doug Hackler to discuss their employment by ASI.
5. Immediately prior to the commencement of Defendants' employment with ASI, Defendant Lloyd met with Dale Wilson to discuss ownership and disclosure of IP.

**INTERROGATORY NO. 6:** Have You entered into a release, settlement, agreement, compromise, covenant or any other type of agreement with any Person, firm or corporation as a result of the Incident referred to in Your Complaint? If so, please set forth the name and address of the Person, firm or corporation, the type of agreement or instrument by which You compromised, settled or released any claims, the date thereof, and the amount of consideration received or given for the same.

**RESPONSE TO INTERROGATORY NO. 6:** No.

**INTERROGATORY NO. 7:** Please Identify any insurance company which has entered into an insurance agreement with Sage, its agents or employees, under which any Person carrying on an insurance business is/was liable to satisfy part or all of Plaintiff's claims, stating the policy number, coverage dates, type of policy, and applicable limits. In the alternative, and pursuant to *I.R.C.P.* 33(c), this Interrogatory may be answered by producing a copy of the applicable declaration page (if any), along with any other documentation indicating a reservation of rights under such policy, or other lack of coverage.

**RESPONSE TO INTERROGATORY NO. 7:** Commencing April 4, 2011, through April 4, 2012, the Defendant Sage Silicon Solutions, LLC, was insured by a general commercial liability policy, Policy Number 60499-62-27, issued by Farmers Insurance Group. Defendants have been in contact with Farmers and this matter is under investigation by Farmers to determine whether there will be any coverage.

**INTERROGATORY NO. 8:** Name and Identify all Persons or entities who have or plan to investigate(d) the cause and circumstances of the instant allegations of the Plaintiff's Complaint.

**RESPONSE TO INTERROGATORY NO. 8:** Defendants object to this interrogatory to the extent that it seeks the disclosure of information that is protected from disclosure pursuant to Rule 26(b)(4)(B) of the Idaho Rules of Civil Procedure. Subject to and without waiving this objection, please see Response to Interrogatory No. 7, *supra*.

**INTERROGATORY NO. 9:** Please Identify each and every employee who has worked for or been employed by Sage Silicon Solutions since it was organized.

**RESPONSE TO INTERROGATORY NO. 9:** Sage Silicon Solutions, LLC, has never had any employees. The members of Sage Silicon Solutions, LLC, are David Roberts, William Tiffany, Gyle Yearsley, Russell Lloyd, Evelyn Perryman and Joshua Nekl.

**INTERROGATORY NO. 10:** Please Identify each and every company, corporation, person, or other entity to which You or Your employees provided services, whether or not payment was received for such services, since Sage Silicon Solutions was organized.

**RESPONSE TO INTERROGATORY NO. 10:** Other than the Plaintiff, the only company to whom the Defendants have provided services is Zilog.

**INTERROGATORY NO. 11:** Please Identify each and every company, corporation, person, or other entity to which You or Your employees offered to provide services or with whom You or Your employees otherwise solicited or offered to form a contract, partnership, or other business relationship since Sage Silicon Solutions was organized, Identifying when such contact occurred and with whom such communications occurred.

**RESPONSE TO INTERROGATORY NO. 11:** Other than the Plaintiff, the only company to whom the Defendants have provided or solicited services is Zilog. The Defendants began soliciting the opportunity to perform services for Zilog as independent contractors commencing prior to their employment with the Plaintiff. Please see e-mails produced in response to Plaintiff's Requests for Production of Documents, below.

**INTERROGATORY NO. 12:** Please Identify each and every computer program, software application, hardware device (including computers, PDA's, smart phones, tablets, or similar devices) and all related software license agreements utilized by You or Your agents and employees in providing services to third-parties other than Plaintiff, including Zilog.

**RESPONSE TO INTERROGATORY NO. 12:** As stated in Defendants Responses to Interrogatories No. 10 and 11, the only party for whom Defendants did any work, other than the Plaintiff, was Zilog, Inc. The Defendants utilized the following:

1. Juniper Network Connection Software;
2. VI or G-edit Text Editing Software for Linux;
3. Ubuntu Linux Operating System Software;
4. Firefox Web Browser Software;
5. Mozilla Thunderbird Mail Software;
6. Sage Software and Computers;
7. Personal Computers owned by Defendants Roberts, Yearsley, Lloyd, Tiffany and Perryman;
8. Open Office Software.

**INTERROGATORY NO. 13:** Please Identify each and every project, product, or other program for which You, Your employees and agents provided services related to such project, product or other program, specifying what services were provided, to whom, and how much compensation you were entitled to receive as a result of such services.

**RESPONSE TO INTERROGATORY NO. 13:** Defendants object to this interrogatory to the extent that it seeks the disclosure of information that does not belong to the Defendants and that is proprietary to Zilog. The information requested by Plaintiff is contained in the redacted documents that will be provided by Defendants to Plaintiff in response to Plaintiff's Requests for Production, below. As the redacted documents contain proprietary information that does not belong to the Defendants, but to Zilog, Defendants will disclose unredacted copies of the redacted documents upon the issuance of a properly prepared and court issued protective

order protecting and overseeing the disclosure of the requested information. Subject to and without waiving this objection, Defendants state generally that they provided verification services for various of Zilog's products and/or projects. The Defendants were independently contracted by Zilog and were paid \$65.00 per hour for the work performed for Zilog.

**INTERROGATORY NO. 14:** Please Identify each and every program for which You, Your employees and agents provided proposals related to design or design services, specifying what intellectual property and services were proposed, to whom the proposal was made, and the proposed compensation you were to receive as a result of such program.

**RESPONSE TO INTERROGATORY NO. 14:** At no time during the existence of Sage Silicon Solutions, LLC, did any of the Defendants provide proposals to any party related to design or design services or specifying what intellectual property and services were proposed. The only work that was performed by the Defendants working through Sage was the design verification work performed for Zilog, Inc. There are no other entities or parties other than ASI or Zilog with whom any of the Defendants did any business or solicited any business.

**INTERROGATORY NO. 15:** Please Identify the Zilog product for which Sage provided services, including setting forth the name of the product and the purpose for which it is to be used.

**RESPONSE TO INTERROGATORY NO. 15:** Defendants object to this interrogatory to the extent that it seeks the disclosure of information that does not belong to the Defendants and that is proprietary to Zilog. The information requested by Plaintiff is contained in the redacted documents that will be provided by Defendants to Plaintiff in response to Plaintiff's Requests for Production, below. As the redacted documents contain proprietary information that does not belong to the Defendants, but to Zilog, Defendants will disclose unredacted copies of

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,  
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the redacted documents upon the issuance of a properly prepared and court issued protective order protecting and overseeing the disclosure of the requested information.

**INTERROGATORY NO. 16:** Please Identify each and every current or former Zilog employee with which You, Your employees and agents communicated, and identify any such persons who were informed that David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, and/or Evelyn Perryman were employed by American Semiconductor.

**RESPONSE TO INTERROGATORY NO. 16:** Please see Response to Interrogatory No. 1, *supra*. The Defendants do not believe that they ever informed or disclosed to Mr. Staab or Mr. Verhoeven that David Roberts, William Tiffany, Gyle Yearsley, Russell Lloyd or Evelyn Perryman were employed by ASI.

**INTERROGATORY NO. 17:** Please state Your gross income, net income, and all payments made to You by third-parties, including when such payments were made and in what amounts, including Zilog, since Sage Silicon Solutions was organized.

**RESPONSE TO INTERROGATORY NO. 17:** The only entities from whom the Defendants received any payments were ASI and Zilog. The payments received from and/or owed by Zilog are contained on the spreadsheet produced in response to Plaintiff's Requests for Production, below.

### **REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Please produce each and every abstract, white paper, proposal, request for quotation, contract, agreement, service agreement, partnership agreement, or other document tending to show a business relationship with a third-party other than Plaintiff, including Zilog, since Sage Silicon Solutions was organized.

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,  
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**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:** As stated in Defendant

Responses to Plaintiff's Interrogatories above, the only party with whom the Defendant's did any business, other than Plaintiff, was Zilog, Inc. Attached hereto as Exhibit A, please find a redacted document titled Zilog Independent Contractor Services Agreement. As the above-produced redacted document contains proprietary information that does not belong to the Defendants, but to Zilog, Defendants will disclose unredacted copies of the above-produced redacted documents upon the issuance of a properly prepared and court issued protective order protecting and overseeing the disclosure of the requested information.

**REQUEST FOR PRODUCTION NO. 2:** Please produce copies or originals of all design data including, but not limited to, design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs utilized by You, Your agents and/or employees in providing services to third-parties other than Plaintiff, including Zilog.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** As stated in Defendant Responses to Plaintiff's Interrogatories above, the only party with whom the Defendant's did any business, other than Plaintiff, was Zilog, Inc. Please see redacted documents attached hereto as follows:

1. Exhibit B – E-mails from William Tiffany to Zilog;
2. Exhibit C – E-mails from Russell Lloyd to Zilog;
3. Exhibit D – E-mails from David Roberts to Zilog;
4. Exhibit E – E-mails from Gyle Yearsley to Zilog; and
5. Exhibit F – E-mails from Evelyn Perryman to Zilog.

As the above-produced redacted documents contain proprietary information that does not belong to the Defendants, but to Zilog, Defendants will disclose unredacted copies of the above-



produced redacted documents upon the issuance of a properly prepared and court issued protective order protecting and overseeing the disclosure of the requested information.

**REQUEST FOR PRODUCTION NO. 3:** Please produce each and every letter, e-mail, fax, text message, instant message, or other document showing communications between You, Your employees and agents, and any third-party, including Zilog, since Sage Silicon Solutions was organized.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:** Please see redacted document produced as Exhibits B through F, above.

**REQUEST FOR PRODUCTION NO. 4:** Please produce each and every letter, e-mail, fax, text message, instant message, or other document showing communications between You, Your employees and agents, and Plaintiff, its employees and agents, since Sage Silicon Solutions was organized.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:** To the extent that the Plaintiff or any of its agents were referred to or copied as recipients in any of the documents produced as Exhibits B through F, above, please refer to those documents. In addition, please see documents attached hereto as Exhibit G containing e-mails between Dale Wilson, Doug Hackler, Rich Chaney, David Roberts, William Tiffany, Gyle Yearsley, Russell Lloyd and/or Evelyn Perryman. In addition, please see emails contained in the folder titled "ASI," which folder is contained on the CD attached hereto as Exhibit I.

**REQUEST FOR PRODUCTION NO. 5:** Please produce a copy of each and every version of Your webpage, any advertising brochures or materials, or other Documents tending to show what services were offered by Sage Silicon Solutions.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:** Defendants did not, at any time, produce any advertising brochures or materials. With regard to the website, please see document attached hereto as Exhibit P.

**REQUEST FOR PRODUCTION NO. 6:** Please produce all statements previously made by You, Your employees or agents, the Plaintiff, Plaintiff's agents or employees, any witness or any other statement or report made by any other Person which in any way refers or Relates to the facts of the subject Incident and Plaintiff's injuries and claim for damages, other than those received in production of documents from Plaintiff. Included in this Request is production of any statement Identified in Your Answer to Interrogatory No. 5.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:** Please see documents attached hereto as Exhibit J containing e-mails between Defendants Roberts, Tiffany and Yearsley, Lloyd and/or Perryman. In addition, please see documents contained on the CD attached hereto as Exhibit I.

**REQUEST FOR PRODUCTION NO. 7:** Please produce each photograph, print, negative, videotape, sketch, diagram or drawing or other such similar Document in Your possession or control which in any way Relates to the subject of this Incident.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:** To the extent that they are responsive to this request, please see the documents produced herein as Exhibits A through P.

**REQUEST FOR PRODUCTION NO. 8:** Please produce each statement, diary, note, engineering notebook, memorandum, calendar, day planner or other Document upon which are recorded the recollections, impressions or opinions of any Person, other than Your attorney, who has Knowledge of the facts of the subject Incident.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:** Please see document attached hereto as Exhibit H consisting of William Tiffany's personal notes.

**REQUEST FOR PRODUCTION NO. 9:** Please produce each exhibit You intend to offer into evidence or use for rebuttal or impeachment purposes, at the trial of this action. Included in this Request is production of any item Identified in Your Answer to Interrogatory No. 4.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:** Please see documents attached hereto as Exhibits A through P. In addition, Defendants reserve the right to offer as evidence or use as rebuttal exhibits any and all documents produced by Plaintiff in response to any Interrogatories and Requests for Production of Documents that are propounded by Defendants upon Plaintiff during the course of this litigation.

**REQUEST FOR PRODUCTION NO. 10:** Please produce federal income tax returns filed by You since Sage Silicon Solutions was organized.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:** Please see documents attached hereto as Exhibit K, consisting of Defendant's, Sage Silicon Solutions, 2010 tax return.

**REQUEST FOR PRODUCTION NO. 11:** Please produce copies of each federal and state tax form prepared by You, Your agents and/or employees, including but not limited to forms for payment of wages to employees (such as W2 forms), Form 940, and Form 941.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:** Please see Response to Request for Production No. 10, above.

**REQUEST FOR PRODUCTION NO. 12:** Please produce records of any and all payments received by You from third-parties other than Plaintiff, including Zilog, pursuant to contract or in exchange for services provided by You, Your agents or employees.

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**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:** As stated in Defendant Responses to Plaintiff's Interrogatories above, the only party with whom the Defendant's did any business, other than Plaintiff, was Zilog, Inc. Please see documents attached hereto as Exhibit L

**REQUEST FOR PRODUCTION NO. 13:** Please produce licenses or ownership records for each and every computer program, software application, hardware device utilized by You or Your agents and employees in providing services to third-parties other than Plaintiff, including Zilog.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:** None.

**REQUEST FOR PRODUCTION NO. 14:** Please produce any and all records of payments made to Your agents, employees, managers or members, whether in the form of salaries, wages, disbursements, stock dividends, or in any other form.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:** Please see Response to Request for Production No. 12, above.

**REQUEST FOR PRODUCTION NO. 15:** Please produce a curriculum vitae or any other such like or similar Document for any of the individuals identified by You in Your Answer to Interrogatory No. 3, above.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:** Please see Response to Interrogatory No. 3, above.

**REQUEST FOR PRODUCTION NO. 16:** Please produce a copy of any and all reports or other such similar Documents generated, reviewed or utilized by the Persons identified in Your Answer to Interrogatory No. 3, above.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:** Please see Response to Interrogatory No. 3, above.

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,  
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**REQUEST FOR PRODUCTION NO. 17:** Please produce a copy of any and all insurance policies, reservation of rights letters, denials of coverage, or other documents related to any insurance policies which may apply to Plaintiff's claims, including any documents Identified in the Answer to Interrogatory No. 7, above.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:** Please see Insurance Policy documents attached hereto as Exhibit M.

**REQUEST FOR PRODUCTION NO. 18:** Please produce a copy of any and all reports or other such similar Documents and/or items of tangible evidence described, identified, referred to, reviewed or inspected by You in preparing Your Answers to Interrogatories.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:** Please see documents attached hereto as Exhibits A through P.

#### **REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** Please admit that the document attached hereto as Exhibit "A" is a true and correct copy of the Certificate of Organization for Sage Silicon Solutions, LLC.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:** Defendants deny this request only because they do not have a copy of the exhibit referred to in the request. However, Defendants admit that the document attached hereto as Exhibit O is a true and correct copy of the Certificate of Organization that was filed with the Idaho Secretary of State on January 28, 2010.

**REQUEST FOR ADMISSION NO. 2:** Please admit that Sage Silicon Solutions, LLC, was organized on or about January 28, 2010.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:** Defendants deny this request to the extent that it implies that Sage Silicon Solutions, LLC ("Sage"), started doing business on January 28, 2010. Defendants admit that the Certificate of Organization for Sage was filed on January 28, 2010. However, for many months prior to January 28, 2010, Sage had been operating as a joint venture/informal partnership. Please see exhibits attached hereto in response to Plaintiff's Requests for Production of Documents.

**REQUEST FOR ADMISSION NO. 3:** Please admit that the members and managers of Sage Silicon Solutions, LLC, include David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, Evelyn Perryman.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:** Admit.

**REQUEST FOR ADMISSION NO. 4:** Please admit that at the time Sage Silicon Solutions LLC was organized, David Roberts was employed by Plaintiff American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:** Defendants admit only that the Certificate of Organization for Sage was officially filed after the date that Mr. Roberts commenced his employment with Plaintiff. However, as stated above, Sage had been in operation for many months prior to the commencement of Mr. Roberts' employment with Sage. In addition, Sage mailed the Certificate of Organization to be filed by the Idaho Secretary of State prior to the commencement of Mr. Roberts employment with Plaintiff.

**REQUEST FOR ADMISSION NO. 5:** Please admit that at the time Sage Silicon Solutions LLC was organized, Gyle Yearsley was employed by Plaintiff American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:** Defendants admit only that the Certificate of Organization for Sage was officially filed after the date that Mr. Yearsley commenced his employment with Plaintiff. However, as stated above, Sage had been in operation for many months prior to the commencement of Mr. Yearsley's employment with Sage. In addition, Sage mailed the Certificate of Organization to be filed by the Idaho Secretary of State prior to the commencement of Mr. Yearsley's employment with Plaintiff.

**REQUEST FOR ADMISSION NO. 6.:** Please admit that at the time Sage Silicon Solutions LLC was organized, Russell Lloyd was employed by Plaintiff American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:** Defendants admit only that the Certificate of Organization for Sage was officially filed after the date that Mr. Lloyd commenced his employment with Plaintiff. However, as stated above, Sage had been in operation for many months prior to the commencement of Mr. Lloyd's employment with Sage. In addition, Sage mailed the Certificate of Organization to be filed by the Idaho Secretary of State prior to the commencement of Mr. Lloyd's employment with Plaintiff.

**REQUEST FOR ADMISSION NO. 7.:** Please admit that at the time Sage Silicon Solutions LLC was organized, William Tiffany was employed by Plaintiff American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:** Defendants admit only that the Certificate of Organization for Sage was officially filed after the date that Mr. Tiffany commenced his employment with Plaintiff. However, as stated above, Sage had been in operation for many months prior to the commencement of Mr. Tiffany's employment with Sage.

In addition, Sage mailed the Certificate of Organization to be filed by the Idaho Secretary of State prior to the commencement of Mr. Tiffany's employment with Plaintiff.

**REQUEST FOR ADMISSION NO. 8:** Please admit that Evelyn Perryman was employed by American Semiconductor beginning on or around April 12, 2010.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:** Admit.

**REQUEST FOR ADMISSION NO. 9:** Please admit that at the time Evelyn Perryman was hired by American Semiconductor, she did not inform American Semiconductor that she was a manager or member of Sage Silicon Solutions, LLC.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:** Deny. At the commencement of Ms. Perryman's employment with ASI, ASI, through its agents, was explicitly and/or implicitly aware that Sage Silicon Solutions was a joint venture/informal partnership that had been doing business for many months prior to the commencement of Defendants' employment with ASI and that Evelyn Perryman was a principal member of Sage.

**REQUEST FOR ADMISSION NO. 10:** Please admit that Sage Silicon Solutions LLC provided services to Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:** Admit

**REQUEST FOR ADMISSION NO. 11:** Please admit that Sage Silicon Solutions LLC provided design services to Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:** Deny. The Defendants provided verification services to Zilog. As stated above, the Defendants were independently contracted by Zilog and the work that was performed for Zilog consisted of verification services.

**REQUEST FOR ADMISSION NO. 12:** Please admit that Sage Silicon Solutions LLC received payment in exchange for services provided to Zilog.

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,  
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**RESPONSE TO REQUEST FOR ADMISSION NO. 12:** Admit.

**REQUEST FOR ADMISSION NO. 13:** Please admit that none of the payments made by Zilog to Sage Silicon Solutions LLC have been forwarded, sent, provided, or otherwise disbursed to Plaintiff American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:** Admit.

**REQUEST FOR ADMISSION NO. 14:** Please admit that Sage Silicon Solutions LLC sought to provide services to other third-parties other than Plaintiff American Semiconductor and Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:** Deny.

**REQUEST FOR ADMISSION NO. 15:** Please admit that the document attached hereto as Exhibit "B" is a true and correct copy of portions of Sage Silicon Solutions LLC's webpage.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:** Defendants deny this interrogatory only because they have not been provided with a copy of Exhibit B and, therefore, they are unable to properly admit or deny that the document referred to is a correct copy of a portion of Sage's webpage.

**REQUEST FOR ADMISSION NO. 16:** Please admit that the document attached hereto as Exhibit "C" is a true and correct copy of portions of Plaintiff American Semiconductor's webpage.

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:** Defendants deny this interrogatory only because they have not been provided with a copy of Exhibit C and, therefore, they are unable to properly admit or deny that the document referred to is a correct copy of a portion of Sage's webpage.

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,  
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**REQUEST FOR ADMISSION NO. 17:** Please admit that language utilized on Sage Silicon Solutions' webpage was copied from American Semiconductor's webpage.

**RESPONSE TO REQUEST FOR ADMISSION NO. 17:** Deny. At the time that Sage's webpage was created, the members/partners of Sage were not employees of Plaintiff and had been working with Plaintiff to establish a mutually beneficial business relationship between Sage and Plaintiff. In fact, Rich Chaney of ASI was instrumental in assisting with the formation of Sage's webpage. Sage did not copy Plaintiff's webpage.

**REQUEST FOR ADMISSION NO. 18:** Please admit that American Semiconductor never gave Sage Silicon Solutions permission to use on Sage Silicon Solutions' webpage the language "In cooperation with American Semiconductor Inc."

**RESPONSE TO REQUEST FOR ADMISSION NO. 18:** Deny. At the time that the webpage was created, the members of Sage were not employees of Plaintiff and had been working with Plaintiff to establish a mutually beneficial business relationship between Sage and Plaintiff. As indicated in the e-mails provided in response to Plaintiff's Requests for Production, Plaintiff had led the Defendants to believe that Plaintiff was also going to refer to Sage on its webpage as a partner and that Sage and Plaintiff were going to create a cooperative and mutually beneficial business relationship.

**REQUEST FOR ADMISSION NO. 19:** Please admit that Sage Silicon Solutions' agents and/or employees utilized American Semiconductor's equipment and property, including without limitation computers, bandwidth, internet connection, etc., in providing the services Sage Silicon Solutions rendered to Zilog and/or other third parties.

**RESPONSE TO REQUEST FOR ADMISSION NO. 19:** Deny. As stated above, the only party with whom Defendants conducted any business, other than Plaintiff, was Zilog. At

the commencement of Defendants employment with Plaintiff, Defendants discussed with Plaintiff, through its agents Dale Wilson and Doug Hackler, that Defendants intended to continue to operate Sage. In response, Plaintiff represented that it did not care what Defendants did on their own time as long as they did not use Plaintiff's equipment and resources. Accordingly, Defendants did not use any of Plaintiff's equipment or resources to provide work for Zilog. Any and all Sage work was performed by the Defendants on their own time and using their own equipment and resources, or equipment and resources that belonged to Sage.

**REQUEST FOR ADMISSION NO. 20:** Please admit that Sage Silicon Solutions' agents and/or employees spent time working on projects for Zilog and/or other third parties when they were being paid to work on projects for American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 20:** Deny. Defendants were very particular not to perform any Sage work during the hours that they were working on Plaintiff's work projects. Any and all Sage work was performed by the Defendants on their own time and using their own equipment and resources, or equipment and resources that belonged to Sage.

**REQUEST FOR ADMISSION NO. 21:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff of the organization or existence of Sage Silicon Solutions.

**RESPONSE TO REQUEST FOR ADMISSION NO. 21:** Deny. Prior to the commencement of any of the Defendants' employment with Plaintiff, Plaintiff, by and through its agents, was aware that the Defendants were doing business as Sage. In fact, in e-mail correspondence from Dale Wilson to Defendants prior to the commencement of Defendants'

employment, Mr. Wilson recognized Sage and represented that as part of Defendants' employment, they would be able to continue to operate Sage.

**REQUEST FOR ADMISSION NO. 22:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff that Sage Silicon Solutions was providing services to Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 22:** Admit. The Plaintiff was aware of Sage and had indicated that it did not care what Sage or its members did on their own time. Furthermore, the type of work that was being performed by Plaintiff was not the type of work that Defendants were doing for Zilog. Accordingly, Defendants did not believe they had any obligation to report the work they were doing with Zilog to Plaintiff.

**REQUEST FOR ADMISSION NO. 23:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff that Sage Silicon Solutions was receiving payments from Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 23:** Admit. Please see Response to Request for Admission No. 22.

**REQUEST FOR ADMISSION NO. 24:** Please admit that Sage Silicon Solutions was operating in competition with Plaintiff.

**RESPONSE TO REQUEST FOR ADMISSION NO. 24:** Deny. ASI is a foundry and Defendants were hired by ASI to assist ASI with two specific contracts – the SAIC and the SBIR contracts. ASI was not in the business of providing the type of services that Defendants were hired to perform for Zilog. Accordingly, there was not competition between Plaintiff and Defendants.

**REQUEST FOR ADMISSION NO. 25:** Please admit that Sage Silicon Solutions sought to provide services to entities which could have obtained the same or similar services from Plaintiff.

**RESPONSE TO REQUEST FOR ADMISSION NO. 25:** Deny. Please see Response to Request for Admission No. 24, above.

**FURTHER INTERROGATORIES**

**INTERROGATORY NO. 18:** Please Identify each and every Person who aided in the completion of the above Answers and Responses on behalf of Sage Silicon Solutions, their position or relationship to Sage Silicon Solutions, and any other names or aliases they have used.

**RESPONSE TO INTERROGATORY NO. 18:**

1. David Roberts;
2. William Tiffany;
3. Gyle Yearsley;
4. Russell Lloyd;
5. Evelyn Perryman; and
6. Russell Metcalf, attorney.

**INTERROGATORY NO. 19:** For each of the above Requests for Admission to which you responded with any answer but an unqualified admission, please set forth every fact which supports, identify every document which supports and identify every witness who has knowledge to support such denial or qualified admission.

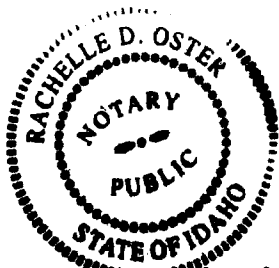
**RESPONSE TO INTERROGATORY NO. 19:** Please see Responses to Requests for Production of Documents and the exhibits attached hereto as well as the Responses to each individual Request for Admission.

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Dated this 25<sup>th</sup> day of January, 2012.

David Roberts  
David Roberts

Subscribed and sworn to before me this 25<sup>th</sup> day of January, 2012.



Rachel D. Oster  
Notary Public for Ada County, Idaho  
Residing at 2001 Creek + Union  
My commission expires: 11/17/2016

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
William Tiffany

Subscribed and sworn to before me this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Gyle Yearsley

Subscribed and sworn to before me this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
David Roberts

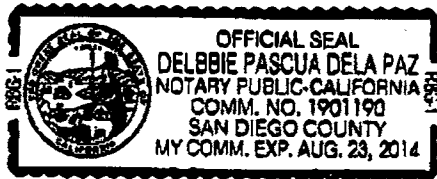
Subscribed and sworn to before me this \_\_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Dated this 26 day of January, 2012.

William J. Tiffany  
William Tiffany

Subscribed and sworn to before me this 26<sup>th</sup> day of January, 2012.



Ami  
Notary Public for \_\_\_\_\_  
Residing at SAN DIEGO, CA  
My commission expires: AUG 23, 2014

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Gyle Yearsley

Subscribed and sworn to before me this \_\_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,  
REQUESTS FOR PRODUCTION AND REQUESTS FOR - 26

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
David Roberts

Subscribed and sworn to before me this \_\_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
William Tiffany

Subscribed and sworn to before me this 27 day of January, 2012.



Kathryn Diane Cisneros  
Notary Public for California  
Residing at Los Angeles County  
My commission expires: July 23, 2015

Dated this 27 day of January, 2012.

Gyle Yearsley  
Gyle Yearsley

Subscribed and sworn to before me this \_\_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_



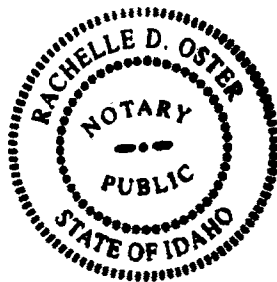
Dated this 25<sup>th</sup> day of January, 2012.

Sage Silicon Solutions, LLC,

By:

David A. Roberts  
David Roberts, member

Subscribed and sworn to before me this 25<sup>th</sup> day of January, 2012.



Rachelle D. Oster  
Notary Public for Ada County, Idaho  
Residing at Iron Creek Union  
My commission expires: 11/12/16

YOST & METCALF, PLLC

By: \_\_\_\_\_  
Russell G. Metcalf

Dated this \_\_\_\_ day of January, 2012.

Sage Silicon Solutions, LLC,

By: \_\_\_\_\_  
David Roberts, member

Subscribed and sworn to before me this \_\_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

YOST & METCALF, PLLC

By:  \_\_\_\_\_  
Russell G. Metcalf

CERTIFICATE OF SERVICE

I hereby certify that on this 27<sup>th</sup> day of January, 2012, I caused to be served by the method indicated below a true and correct copy of the foregoing document upon:

Stephen L. Adams  
Anderson, Julian & Hull, LLP  
P.O. Box 7426  
Boise, Idaho 83707

☐ U.S. Mail  
☐ Overnight Mail  
☒ Hand Delivery  
☐ Facsimile

  
\_\_\_\_\_  
Russell G. Metcalf

From: <wtiffany@sagesiliconsolutions.com>  
 To: "David Staab" <DStaab@zillog.com>  
 Cc: "Gyle Yearsley" <gyeasley@sagesiliconsolutions.com>  
 Sent: Wednesday, April 06, 2011 4:10 PM  
 Subject: RE: [REDACTED] address space (no [REDACTED] interface)

The [REDACTED] address will just need to point to the appropriate [REDACTED]. There are registers in the [REDACTED] that define the starting address for each [REDACTED] area in buffer memory. In addition to pointing to the appropriate [REDACTED] the remaining 4-5 bits could be used to provide an offset into the [REDACTED] in case software doesn't need to [REDACTED] part of the header.

Yes I think the [REDACTED] addressing would be modulo 64, however we may want a test mode to remove the modulo 64 to facilitate testing the entire memory.

I agree we don't need what I suggested for #3, we should probably reserve an address for things like test mode control and other things we haven't thought of.

Bill

> Hi Bill,

>

> Thanks. This helps.

> Gee, 8 registers in the register map, can't you make it smaller? ;-)

>

> I agree with the basic concept. Having slept on it, do you guys see a better alternative?

>

> A couple questions/comments:

>

> \*

> You have 8-bit address for [REDACTED] yet buffer

> memory is [REDACTED] addresses. Were you making some additional assumption,

> such as [REDACTED] implies only 256 addresses each?

> \*

> I assume some address translation may be needed.

> \*

> Not sure that you need 0x3. If auto-increment occurs when the

> CPU writes 0x2 and the auto-incremented address is not the next address

> that the CPU wants, CPU behavior is unchanged, i.e. write 0x0-0x1

> \* Would [REDACTED] address registers increment modulo 64 (wrap around a

> [REDACTED]?

> \*

> I suppose there may be some opportunity to remove interface

> (clocking) restrictions given that address is now available before data

> is read/written.

> \*

> I'm thinking [REDACTED] total including [REDACTED]

> \*

> It may make sense to do similar addressing for the [REDACTED] data

10/11/2011

SAGE 350

000197

> buffer with auto-increment. This would probably compress the [REDACTED]  
> footprint to 8 bytes. As such, neither the [REDACTED] or [REDACTED] would need to be  
> banked behind another peripheral. Banking [REDACTED] behind something is  
> probably a no-no anyway due to the complexity it would cause with [REDACTED]  
> access.

>

> Regards,

> David

>

>

> From: [wtiffany@msn.com](mailto:wtiffany@msn.com) [mailto:wtiffany@msn.com] On Behalf Of Bill  
> Tiffany

> Sent: Tuesday, April 05, 2011 7:58 PM

> To: David Staab

> Cc: Gyle Yearsley

> Subject: [REDACTED] address space (no [REDACTED] interface)

>

>

> Here is the memory map for the [REDACTED] register and [REDACTED] memory

> space with the [REDACTED] and [REDACTED] related registers commented out. The

> memory map extends from [REDACTED] including [REDACTED] memory and

> registers. The [REDACTED] memory for [REDACTED] are directly addressable.

> The [REDACTED] memory for their [REDACTED] are accessed like a

> [REDACTED]. I probably missed a few registers.

>

> Address RegisterID Description

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

>

> [REDACTED]

## > INDIRECT ADDRESSING OF

[illegible]

[REDACTED]



GARY L. COOPER\*

\*licensed in Idaho, Utah and  
Wyoming

REED W. LARSEN

## COOPER & LARSEN

151 NORTH 3<sup>rd</sup> AVE. - 2<sup>nd</sup> FLOOR  
P.O. BOX 4229  
POCATELLO, ID 83205-4229

RON KERL - Of Counsel

TELEPHONE (208) 235-1145  
FAX (208) 235-1182

www.cooper-larsen.com

JAVIER L. GABIOLA

---

Attorneys at Law

---

March 16, 2012

Brian K. Julian  
Stephen L. Adams  
Anderson, Julian & Hull, LLP  
C. W. Moore Plaza  
250 South Fifth Street, Suite 700  
P.O. Box 7426  
Boise, ID 83707-7426

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al*

Dear Brian and Steve:

I am attaching a proposed Protective Order for use in this case. Please review and let me know if you have corrections or additions you would like incorporated.

The immediate concern is resolving the discovery dispute over production of documents by my clients which have been redacted. Although I was not involved in the case at the time of the production of those documents, I have talked with counsel for Zilog who is adamant that these emails and communications contain sensitive proprietary and trade secret information. My clients agree. Zilog and my clients are agreeable to producing non-redacted documents as long as they are produced for attorney eyes only with the attorneys being "outside" counsel such as yourself and not in-house counsel or in-house experts, whether trial or consulting. In my discussions with Steve, he indicated that he will need an expert to help decipher these documents. If that is the case, then an outside trial or consulting expert is permitted to review and analyze the documents.

I do not expect that we will agree on this issue or some of the future confidentiality designations. Both of us retain the right to seek help from the court should we be unable to resolve the issue between ourselves. I think the point is that this provides a mechanism so that we can get sensitive documents into your hands which will facilitate further discussions about who will be allowed to help you decipher the documents. I expect the same issue will come up when you produce documents I have requested.





Brian K. Julian  
Stephen L. Adams  
March 16, 2012  
Page 2

Give me a call to discuss so that we can move forward with the document production.

Very truly yours,

  
GARY L. COOPER

GLC:bs

Enclosure (1)

cc: Russ Metcalf

12-119

000202

Gary L. Cooper - Idaho State Bar #1814  
COOPER & LARSEN, CHARTERED  
151 North Third Avenue, Second Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Email: gary@cooper-larsen.com

*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
Gyle Yearsley and William Tiffany*

Russell G. Metcalf - Idaho State Bar #7024  
YOST & METCALF, PLLC  
4 Ogden Avenue  
P. O. Box 1275  
Nampa, ID 83653  
Telephone: (208) 466-9222  
Facsimile: (208) 466-1981  
Email: [russell@wyostlaw.com](mailto:russell@wyostlaw.com)

*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**STIPULATED PROTECTIVE  
ORDER RE: DISCOVERY**

SAGE SILICON SOLUTIONS, LLC, an	)
Idaho limited liability company; DAVID	)
ROBERTS, GYLE YEARSLEY, RUSSELL	)
LLOYD, WILLIAM TIFFANY, EVELYN	)
PERRYMAN, individuals,	)
	)
Counterclaimants,	)
	)
vs.	)
	)
AMERICAN SEMICONDUCTOR, INC.,	)
an Idaho Corporation,	)
	)
Counterdefendant.	)
_____	)

The parties to this action stipulate and agree that discovery in this matter may involve production of confidential or trade secret information. In view of this stipulation the Court hereby finds that good cause exists for issuance of a Protective Order with respect to discovery. Therefore, pursuant to Idaho R. Civ. P. 26(c),

IT IS HEREBY ORDERED AS FOLLOWS:

1. Definitions. The following definitions shall apply to this Order:

(a) Designation of Material as "Confidential": If a party believes in good faith that documents in any format, materials or information ("Material") supplied by it, the other party or a third party constitutes commercially sensitive or proprietary information, the party may designate such information as Confidential, and it shall be entitled to protection pursuant to Idaho R. Civ. P. 26(c). "Confidential Information" must be commercially sensitive or proprietary information, but shall not include information that was publicly available or in the public domain at the time it was communicated or disclosed by the party producing the information to the qualified person. "Publicly available" information includes, but is not limited to, information that was

disclosed pursuant to law, or in response to the order of a court of government authority. Publicly available information does not include information disclosed by a party or to a third-party under a reasonable expectation of confidentiality.

(b) Designation of Material as "Attorneys' Eyes Only": If a party or counsel believes in good faith that Materials supplied by it, or a third party constitute trade secrets, confidential research, manufacturing development, or other commercially sensitive or proprietary information, the disclosure of which to a party or a third party would injure a party or a third party, the party or counsel may designate such information as "ATTORNEYS' EYES ONLY" and the information so designated shall thereafter be subject to the "Attorneys' Eyes Only" provisions of this Stipulated Protective Order.

(c) The parties shall in good faith consult regarding the appropriateness of the "Confidential" and/or "Attorneys' Eyes Only" designation. If they are unable to agree, the issue shall be submitted to the Court for resolution as set forth herein.

(d) "Qualified Persons" shall mean and refer to:

- (i) attorneys who are counsel of record and are representing or have represented any of the parties to this lawsuit in connection with the matters raised in the lawsuit and persons in the regular secretarial, clerical, stenographic or paralegal employ of the law firm that are counsel of record in this law.
- (ii) representatives of the parties to this action who are responsible for or involved in the conduct of this litigation, except that Confidential Information disclosed to such persons shall be limited to that which reasonably relates to their responsibility for or conduct of the litigation;
- (iii) court personnel, including stenographic reporters engaged in such proceedings, incident to counsel's preparation for trial and/or trial of this action;

- (iv) expert witnesses or prospective expert witnesses retained or consulted by counsel for purposes of this case, except that the Confidential Information disclosed to such persons shall be limited to that reasonably necessary for them to form an opinion or prepare their testimony as to the matters about which counsel consulted or retained them;
- (v) consultants and/or experts retained or consulted by counsel, who assist counsel in the prosecution in this action, except that Confidential Information disclosed to such persons shall be limited to that which reasonably relates to the issues or subject on which they advise counsel;
- (vi) fact witnesses (including their counsel), called at trial or hearing or used in the investigation of all claims and defenses, except that the Confidential Information disclosed to such persons shall be limited to that which is reasonably necessary for their testimony or its preparation; and
- (vii) such other persons as may hereafter be qualified to receive Confidential Information pursuant to order of this Court or written agreement of the parties.

2. Limits on Use of Information. Confidential or Attorneys' Eyes Only information shall only be disclosed to the persons and under the circumstances described herein. The parties shall not use or rely on any Confidential or Attorneys' Eyes Only information learned as a result of this litigation, except as reasonably required by the litigation. If any party breaches this Paragraph 2, any other party may seek injunctive, compensatory and/or other relief allowed by law or equity. Persons who execute an acknowledgement form pursuant to Paragraphs 3 and 4 below, shall be considered "parties" for the purposes of this Paragraph 2.

3. Confidential Information. The substance or content of the Confidential Information shall not be disclosed to anyone other than a Qualified Person. No Confidential Information disclosed pursuant to the terms of this Order shall be disclosed or used by a recipient for any purpose other than reasonably necessary for the conduct of this litigation.

4. Attorneys' Eyes Only Information. The substance or content of Attorneys' Eyes Only information shall not be disclosed to anyone other than outside attorneys who are counsel of record and are actively representing any of the parties to this lawsuit in connection with the matters raised in the lawsuit and outside non-attorney experts and outside non-attorney consulting experts retained by that party. "Outside" is intended to limit and does limit and prohibit disclosure of Attorneys' Eyes Only information to employees of American Semiconductor, Inc.. Prior to the disclosure of Attorneys' Eyes Only information to any expert or consultant, that person must execute an acknowledgement, acknowledging that he or she had read and will be bound by the terms of this Order. Attorneys' Eyes Only information is to be used solely for the purpose of this case.

5. Identifying Information Subject to Protective Order. Any Material, including but not limited to any deposition transcript page or portion thereof, shall be identified as Confidential Information or Attorneys' Eyes Only information and, where appropriate, marked prominently by the disclosing party with the following legend: "**Confidential**" or in the case of Attorneys' Eyes Only information "**Confidential - Attorneys Eyes Only.**" Counsel for the disclosing party shall advise counsel for the other party of the Material to fall within the terms of this Order within thirty (30) days of receiving the Material. All parties shall treat any Material disclosed in this matter as confidential during the thirty-day period for confidentiality designation. Unless the disclosing party substantially complies with this paragraph, its claim of confidentiality will be waived, provided that if a disclosing party inadvertently failed to appropriately designate Material as containing or constituting Confidential or Attorneys' Eyes Only information without the aforesaid legend, it shall have thirty days after disclosure to request the other party to so mark the document, at which time the document shall be treated as a Confidential or Attorneys' Eyes Only document pursuant to the

terms of the Order. The parties shall designate deposition transcripts on a line-by-line basis. All other documents shall be designated on a page-by-page basis. If a party believes that a more detailed designation of a document is necessary (e.g., sentence-by-sentence), it may so designate, or it may request that another party re-designate that document, as applicable.

6. Challenges to Designations of Protective Order Coverage. Any party may, at any time, give notice to a producing party that the party challenges the other party's request for confidentiality. If the parties cannot resolve their dispute amicably, then the requesting party may file a motion at that time seeking an Order of the Court with respect to the Material in question. The proponent of the request for confidentiality shall bear the burden of demonstrating that confidential treatment is appropriate. The requesting party shall continue to hold the Material as Confidential or in Attorneys' Eyes Only status until the Court rules on the Material in question.

7. Filing Covered Information with Court. All Materials filed with the Court, which are designated by the other party as comprising or containing Confidential or Attorneys' Eyes Only information, and any pleading or memorandum purporting to produce or paraphrase Confidential or Attorneys' Eyes Only information, shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the title of this action, an indication of the nature of the contents of such sealed envelope or other container, and the word "CONFIDENTIAL" and a statement substantially in the following form:

This envelope contains documents which are filed in this case by (name of party) and is not to be opened or the contents thereof to be displayed or revealed except by order of the Court; provided, however, that counsel of record for any of the parties in this case and paralegals employed by said counsel may open this envelope in the office of the Clerk of this Court and there inspect the contents hereof at any time, and from time to time, without order of the Court, and upon completion of such inspection by counsel, the envelope containing such documents shall be resealed by the Clerk of this Court.

Any Materials submitted to the Court, or any appellate court, as provided herein shall thereby become part of the record and subject to the provisions of this Protective Order. Should the Court determine during the duration of this matter or at its conclusion that, under applicable law, the public may have an interest in viewing sealed Materials, the Court will hold a hearing to determine which Materials, if any, should be unsealed.

8. Continuing Jurisdiction. Jurisdiction of this action is to be retained by this Court after final determination for purposes of enabling any party or person affected by this Order to apply to the Court for such direction, order or further decree as may be appropriate for the construction; modification, enforcement or compliance herewith or for the punishment of any violation hereof, or for such additional relief as may become necessary to realize the intentions of this Order.

9. Restrictions on Use of Confidential Information in Depositions. Persons may be deposed regarding Confidential information. Only Qualified Persons as defined in this Order may be present during such depositions. A reporter recording any Confidential information or incorporating into a transcript any Material containing Confidential information or incorporating into a transcript any documents containing Confidential information shall transmit such transcript only to counsel of record for the parties. Any such transcript shall not be filed with the Clerk of this Court, except under Seal.

10. Restrictions on Use of Attorneys' Eyes Only Information in Depositions. Persons employed or retained by a party may be deposed regarding Attorneys' Eyes Only information produced by that party. Only counsel of record for the deposing party may be present during the portion of such depositions in which Attorneys' Eyes Only information is discussed or referred to. A reporter recording any Attorneys' Eyes Only information or incorporating into a transcript any



documents containing Attorneys' Eyes Only information shall transmit such transcript only to counsel of record for the parties. Any such transcript shall not be filed with the Clerk of this Court, except under Seal.

11. Further Orders of Court. Maintenance of the confidential status of any Material shall in all cases be subject to further Order of the Court and nothing herein shall preclude any party from applying to the Court for any appropriate modification of this Order; provided, however, that prior to such application, the parties shall certify in writing that they have endeavored unsuccessfully to resolve the matter.

12. Coverage of Pretrial Proceedings. This Order shall govern pretrial proceedings. The handling of Confidential or Attorneys' Eyes Only information at trial may be governed by a later Order of the Court.

13. Return of Information Upon Termination. Upon termination of this action, the Clerk shall return all documents containing Confidential or Attorneys' Eyes Only information in the Court file to counsel for the party who filed such Confidential or Attorneys' Eye Only information. Further, upon termination of this action, all documents containing Confidential or Attorneys' Eyes Only information and any copies thereof in the possession of any other person shall be returned within 30 days to counsel for the party who provided such Confidential or Attorneys' Eyes Only information.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

BY THE COURT:

\_\_\_\_\_  
THOMAS F. NEVILLE  
District Judge

STIPULATED AND APPROVED  
AS TO FORM AND SUBSTANCE:

ANDERSON, JULIAN & HULL, LLP

---

BRIAN K. JULIAN  
Attorney for Plaintiff

YOST & METCALF, PLLC

---

RUSSELL G. METCALF  
Attorney for Defendants

COOPER & LARSEN

---

GARY L. COOPER  
Attorney for Defendants

**EXHIBIT A**

**ACKNOWLEDGMENT**

The undersigned hereby acknowledges:

1. I have read the Stipulated Protective Order Re: Discovery entered \_\_\_\_\_, 2012, in American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, Zilog, Inc., David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, Evelyn Perryman, and Defendants Does I - X, and I am one of the persons contemplated by paragraph 1 thereof as authorized to receive disclosure of information designated "Confidential."

2. I fully understand and agree to abide by the obligations of the Stipulated Protective Order Re: Discovery, particularly those obligations outlined in paragraph 1(c).

3. I agree to keep confidential all Confidential information which is revealed to me. I will not disclose, discuss, distribute, disseminate or otherwise give anyone access to any Confidential information which I am shown or given other than authorized persons listed in paragraph 1(d) if the Confidential information is designated as "Confidential." I will not use or rely on the Confidential information that I learn as a result of this litigation for any purpose, except as reasonably required by the litigation.

4. Upon the conclusion of this litigation, I agree to comply with paragraph 13 of the Stipulated Protective Order Re: Discovery concerning disposing of the Confidential information supplied to me.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

**EXHIBIT B**

**ACKNOWLEDGMENT**

The undersigned hereby acknowledges:

1. I have read the Stipulated Protective Order Re: Discovery entered \_\_\_\_\_, 2012, in American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, Zilog, Inc., David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, Evelyn Perryman, and Defendants Does I - X, and I am one of the persons contemplated by paragraph 1 thereof as authorized to receive disclosure of information designated "Confidential - Attorneys' Eyes Only."

2. I fully understand and agree to abide by the obligations of the Stipulated Protective Order Re: Discovery, particularly those obligations outlined in paragraph 1(c).

3. I agree to keep confidential all Attorneys' Eyes Only information which is revealed to me. I will not disclose, discuss, distribute, disseminate or otherwise give anyone access to any Attorneys' Eyes Only information which I am shown or given other than authorized persons listed in paragraph 1(d) if the Confidential information is designated as "Confidential - Attorneys' Eyes Only." I will not use or rely on the Attorneys' Eyes Only information that I learn as a result of this litigation for any purpose, except as reasonably required by the litigation.

4. Upon the conclusion of this litigation, I agree to comply with paragraph 13 of the Stipulated Protective Order Re: Discovery concerning disposing of the Confidential information supplied to me.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

## Stephen Adams

---

**From:** Stephen Adams  
**Sent:** Friday, March 16, 2012 3:06 PM  
**To:** 'Gary Cooper'  
**Cc:** Barbie Snell  
**Subject:** RE: American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al (AJH File No. 2322-002)

Mr. Cooper,

I understand your point. However, since it seems that everything that we have requested be unredacted will be marked "attorney's eyes only", we're going to have to argue about it at some point. Unless we can reach an agreement where our clients are allowed to look at the unredacted documents (which, based on my conversations with you and Mr. Metcalf is not likely going to happen), we might as well address the issue now, rather than later.

Stephen Adams

Stephen L. Adams  
ANDERSON, JULIAN & HULL, LLP  
P.O. Box 7426  
Boise, Idaho 83707-7426  
(208)344-5800 voice  
(208)344-5510 fax

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**From:** Gary Cooper [<mailto:gary@cooper-larsen.com>]  
**Sent:** Friday, March 16, 2012 3:02 PM  
**To:** Stephen Adams  
**Cc:** Barbie Snell; Gary L. Cooper  
**Subject:** Re: American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al (AJH File No. 2322-002)

I am happy to discuss any other proposals that you might have. However, even under the protective order you have the right to contest my designation of information as confidential or attorney's eyes only. It just seemed like it made sense to negotiate the protective order, have us produce the unredacted records under whatever designation we deem appropriate (attorney eye's only in the case of these records) and then go to the Court.

Gary

On Fri, Mar 16, 2012 at 1:31 PM, Stephen Adams <[sadams@ajhlaw.com](mailto:sadams@ajhlaw.com)> wrote:

Mr. Cooper,



Thank you very much for your work in preparing that proposed protective order; I appreciate that you were willing to try to resolve this problem short of involving the Court. However, I don't believe the proposed solution is adequate.

In your letter, you indicated that you did not expect that we will agree on the issue of using outside experts to review the documents. You are correct. Our clients are not agreeable to the idea that the unredacted documents be shielded from them. Our clients are experts on the issues in this case, and there is a strong likelihood that we will name them as experts (in addition to any outside experts that may be retained, as we discussed on the phone), and as such, they will need to see the unredacted documents. Unless you have another suggestion, I think we're going to have to bring this issue to the attention of the court. Please let me know your thoughts or if you have any alternative suggestions.

We plan to file a motion to compel as soon as practicable. Thank you for your time.

Stephen Adams

Stephen L. Adams  
ANDERSON, JULIAN & HULL, LLP  
P.O. Box 7426  
Boise, Idaho 83707-7426  
(208)344-5800 voice  
(208)344-5510 fax

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**From:** Barbie Snell [<mailto:barbie@cooper-larsen.com>]  
**Sent:** Friday, March 16, 2012 11:28 AM  
**To:** Brian Julian; Stephen Adams  
**Cc:** Gary Cooper  
**Subject:** American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al

Gentlemen:

Attached is Gary's letter dated March 16, 2012, and proposed Stipulated Protective Order Re: Discovery.

Thank you,

Barbie Snell, Paralegal

Cooper & Larsen

P. O. Box 4229

Pocatello, ID 83205-4229

208-235-1145 phone

208-235-1182 fax

--

Gary L. Cooper  
COOPER & LARSEN

FILED  
P.M.

MAY 16 2012

CHRISTOPHER D. RICH, Clerk  
By JAMIE RANDALL  
DEPUTYNeville  
Janet  
5/17/12  
CP

Gary L. Cooper - Idaho State Bar #1814  
 COOPER & LARSEN, CHARTERED  
 151 North Third Avenue, Second Floor  
 P.O. Box 4229  
 Pocatello, ID 83205-4229  
 Telephone: (208) 235-1145  
 Facsimile: (208) 235-1182  
 Email: [gary@cooper-larsen.com](mailto:gary@cooper-larsen.com)

*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
 Gyle Yearsley and William Tiffany*

Russell G. Metcalf - Idaho State Bar #7024  
 17 E. Wyoming Avenue  
 P. O. Box 385  
 Homedale, ID 83628  
 Telephone: (208) 337-4945  
 Facsimile: (208) 337-4854  
 Email: [rmetcalf@cablecone.net](mailto:rmetcalf@cablecone.net)

*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
 an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
 Idaho Corporation; ZILOG, INC., a  
 Delaware Corporation; DAVID ROBERTS,  
 GYLE YEARSLEY, RUSSELL LLOYD,  
 WILLIAM TIFFANY, EVELYN PERRYMAN,  
 and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

AFFIDAVIT OF  
 STEVE DARROUGH

AFFIDAVIT OF STEVE DARROUGH - PAGE 1

ORIGINAL

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SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,

Counterclaimants,

vs.

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Counterdefendant.

STATE OF CALIFORNIA

County of *Santa Clara* :ss

STEVE DARROUGH, being first duly sworn on oath, deposes and states as follows:

1. I am currently the Vice President of Worldwide Marketing at Zilog. This Affidavit is made of my own personal knowledge.
2. I joined Zilog in 2008. My responsibilities include management of the Zilog marketing presence from brand to product development and driving strategic campaigns for demand creation and growth. I have twenty plus years of technical engineering and marketing management experience. Prior to Zilog I held marketing management and technical engineering roles at Intel Corporation for over 14 years where I led several teams, driving new technologies directly relating to current product initiatives. I am very familiar with the identity of Zilog's competitors and in what way these competitors compete with Zilog in the marketplace.

AFFIDAVIT OF STEVE DARROUGH - PAGE 2

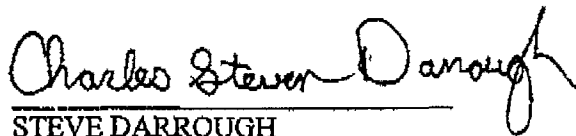
000218

3. Zilog is an Integrated Circuit manufacturer specializing in microcontrollers, microprocessors, peripheral devices and systems on chips (SoC's). It supplies application specific, embedded SoC solutions for the industrial and consumer markets. It is an award-winning architect in the microprocessor and microcontroller industry. Its expertise goes beyond core silicon to include SoCs, single board computers, application specific software stacks and development tools that allow embedded designers quick time to market in areas such as energy management, monitoring and metering and motion detection.
4. American Semiconductor, Inc. manufactures Integrated Circuits using microcontroller circuits. Its website advertises that it has design experience using Zilog microcontroller cores. Selling devices based on Zilog's microcontroller cores represents the majority of Zilog's revenue. If information about the product and verification work performed by members of Sage Silicon Solutions, Inc. is provided to American Semiconductor, Inc., it will help its design engineers to understand the device and provide an unfair advantage into its construction and operation. It will give American Semiconductor, Inc. the ability to replicate the product Zilog spent hundreds of thousands of dollars to develop. This industry is highly competitive and American Semiconductor, Inc. is a direct competitor with Zilog in numerous areas, including developing and selling designs like those which were being verified by the members of Sage Silicon Solutions, Inc.. Zilog took all reasonable steps to protect this information from the public and competitors, including having the members of Sage Silicon Solutions, Inc. execute extensive confidentiality and non disclosure provisions.
5. Zilog competes with American Semiconductor, Inc. for engineering talent. Several ex-Zilog employees currently work for American Semiconductor, Inc. The employees at American

Semiconductor, Inc. have the same skill sets as Zilog employees, including IC Design, Layout, Test and Verification, Process Engineering, Process Development, Quality Control, etc... Zilog's confidential and proprietary information will give American Semiconductor, Inc. an unfair advantage in an extremely competitive market.

6. I understand that some of the information which has been deleted includes the identity of design engineers working on the Zilog product who were not members of Sage Silicon Solutions, LLC. I do not want their identities provided to American Semiconductor, Inc. because it will make it easier for American Semiconductor, Inc. to recruit them and will add further expense and delays to Zilog's research and development.
7. I cannot reiterate enough how critical it is to the profitability and competitive position of Zilog in the Integrated Circuit business to maintain the secrecy of the designs of its products. To a lay person off the street the information would make no sense and seem harmless, but to somebody working in the design department of a competitor this information is the key which unlocks how and why our products are valuable to our customers. Zilog is committed to doing everything in its power to keep this information out of the hands of our competitors. We at Zilog felt that this was accomplished with the agreements we require all employees and contractors to sign and I ask the Court not to void that protection.

DATED this 16<sup>th</sup> day of May, 2012.

  
STEVE DARROUGH

STATE OF CALIFORNIA

)

) SS

COUNTY OF SANTA CLARA

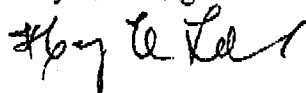
)

On this 16th day of May 2012, before me, HONG T. LEE, Notary Public, personally appeared CHARLES STEVE DARROUGH, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same of his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature



Notary Public Seal



CERTIFICATE OF SERVICE

I hereby certify that on the 16<sup>th</sup> day of May, 2012, I served a true and correct copy of the foregoing to:

Brian K. Julian  
Stephen L. Adams  
ANDERSON, JULIAN & HULL  
C. W. Moore Plaza  
250 South Fifth Street, Suite 700  
P.O. Box 7426  
Boise, Idaho 83707-7426

☒ U.S. mail  
☐ Express mail  
☐ Hand delivery  
☒ Electronic delivery bjulian@ajhlaw.com  
sadams@ajhlaw.com  
☐ Fax: 208-344-5510

Russell G. Metcalf  
17 E. Wyoming Avenue  
P. O. Box 385  
Homedale, ID 83628

☒ U.S. mail  
☐ Express mail  
☐ Hand delivery  
☒ Electronic delivery rmetcalf@cableone.net  
☐ Fax: 208-337-4854

  
GARY L. COOPER

Neville  
Sanet  
5-18-72  
PL

RECEIVED  
MAY 17 2012  
Ada County Clerk

NO. 9.53 FILED  
AM. 9.53 P.M.

MAY 17 2012

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

Gary L. Cooper - Idaho State Bar #1814  
COOPER & LARSEN, CHARTERED  
151 North Third Avenue, Second Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Email: [gary@cooper-larsen.com](mailto:gary@cooper-larsen.com)

*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
Gyle Yearsley and William Tiffany*

Russell G. Metcalf - Idaho State Bar #7024  
17 E. Wyoming Avenue  
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Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Email: [rmetcalf@cableone.net](mailto:rmetcalf@cableone.net)

*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
 )  
Plaintiff, )

CASE NO. CV-OC-1123344

vs. )

**AFFIDAVIT OF DAVID ROBERTS**

SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, RUSSELL LLOYD, )  
WILLIAM TIFFANY, EVELYN PERRYMAN, )  
and Defendants DOES I - X, )  
 )  
Defendants. )

Jo

SAGE SILICON SOLUTIONS, LLC, an )  
 Idaho limited liability company; DAVID )  
 ROBERTS, GYLE YEARSLEY, RUSSELL )  
 LLOYD, WILLIAM TIFFANY, EVELYN )  
 PERRYMAN, individuals, )  
 )  
 Counterclaimants, )  
 )  
 vs. )  
 )  
 AMERICAN SEMICONDUCTOR, INC., )  
 an Idaho Corporation, )  
 )  
 Counterdefendant. )  
 \_\_\_\_\_ )

STATE OF IDAHO )  
 :ss  
 County of )

DAVID ROBERTS, being first duly sworn on oath, deposes and states as follows:

1. I am one of the Defendants and Counterclaimants in this lawsuit. The information contained in this Affidavit is based on my own personal knowledge.
2. I am an electrical engineer. I have a degree in electrical engineering from Colorado State University. I received my degree in 1982. I have worked in the design and development of microprocessors and microcontrollers since receiving my degree. Prior to Zilog, I also worked as an engineer or design manager at Texas Instruments, Advanced Micro Devices and Sharp Microelectronics of America on microprocessors and microcontroller designs.
3. I worked for Zilog designing and developing microprocessors and microcontrollers from August 2004 to January 2009. I was a design manager when I was laid off.
4. The project I worked on as a member of Sage Silicon Solutions, LLC was as an independent contractor for Zilog beginning in 2011. The project was a derivative of a project very similar

to the projects my design team at Zilog worked on while I was employed there between 2004 and 2009.

5. I have personal knowledge and familiarity with the emails which were produced in a redacted form in discovery responses in this litigation.
6. I have knowledge of the Zilog design in question along with similar designs completed by Zilog while being employed by Zilog from August 2004 to January 2009. Zilog designs are arranged in families of devices which have some common functions with a common base microprocessor core function. Products are differentiated with integrated peripheral functions that are uniquely required for a defined market space. These unique peripheral functions define the market which Zilog intends to penetrate by either offering advanced features or new features that support the intended customer needs. From my experience at Zilog, determining these new and improved features is difficult and represents a close working relationship with their customers that other competitors do not have or cannot establish. It also requires knowledge of the peripheral function requirements and how to implement them with an existing set of peripherals and microprocessor core to achieve a usable product.
7. I signed agreements with Zilog in connection with my work as an independent contractor. A copy of those agreements are attached to this Affidavit as Exhibit "A." The agreements with Zilog protects these new and or improved features from leaking out and becoming knowledge of competitors. Also, knowledge of how these peripherals are successfully integrated to achieve an efficient and successful product are a critical trade secret to Zilog's long term success. Information regarding the new peripherals, features, functions and how they were integrated were redacted from the emails.

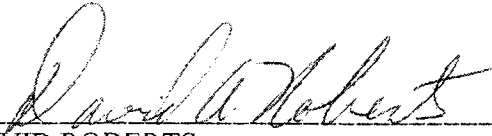


8. The identity of design engineers working on the Zilog product who were not members of Sage Silicon Solutions, LLC were also redacted because I do not have their permission to disclose their names. These engineers were the "design" engineers for Zilog. They were employees of the Zilog parent company, Ixys. They had no involvement in the contracting of members of Sage Silicon Solutions, LLC. These engineers were responsible for the bulk of the design work being done for the product. Engineers from Sage Silicon Solutions, LLC supported the verification and integration of their new peripheral designs that implemented the features for potential new customers.
9. Third party IP information was redacted to prevent the third party IP provider's confidential information from being released to American Semiconductor, Inc. Each member of Sage Silicon Solutions, LLC working on this projection for Zilog who required access to the third party IP information signed a non-disclosure agreement with the IP provider as well as with Zilog. The Third party IP providers regard the details of how they implemented a function as critical to their financial success and would aggressively defend it's release to a foundry service provider like American Semiconductor, Inc. that did not have a non-disclosure agreement with them.
10. The information produced also had redacted from it all design file information in the form of code snippets and file locations which are critical to Zilog's successful designs. My background with many years of working with complex designs gives me a perspective on how a simple snippet of code can provide insight on how an engineer is able to resolve a problem. These problems are often found through verification efforts. The experience of Sage Silicon Solutions, LLC engineers allowed them to work with the Ixys/Zilog design

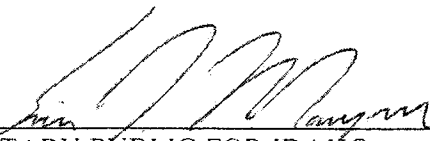
engineers to complete integration of a new peripheral function. Providing the redacted code and location information to American Semiconductor, Inc. would give it, a foundry service company, clear insight into Zilog trade secrets on how a design company becomes successful. These are trade secrets that belongs to Zilog and would be very valuable to American Semiconductor, Inc.

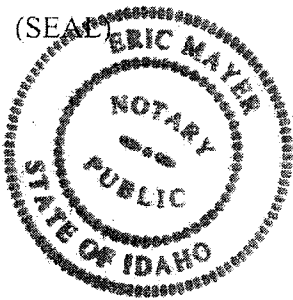
11. Although it does not appear to be a part of the information which is the subject of this Motion to Compel, the discovery requests also sought actual design files and even logs for checking code into the Zilog design repository. Emails represent a small amount of the confidential information American Semiconductor, Inc. requested. The design code was always on Zilog computers. I had access to Zilog computers through a secure network connection which has now been disabled and to which I do not have access. The engineers for Sage Silicon Solutions, LLC did all work on the Zilog project from home computers on Zilog computers via the secure network connection. I do not have access to the design files which were requested, even if the court orders us to provide it. I simply do not have what American Semiconductor, Inc. requests. It is on Zilog computers. I could not get it if I wanted to get it.
12. It is my firm belief and opinion based on my experience and personal knowledge that if the redacted information is provided to employees and agents of American Semiconductor, Inc. it would provide American Semiconductor, Inc. with the information necessary to develop the product which Zilog is developing without doing the necessary research and development. It would permit American Semiconductor, Inc. to compete directly with Zilog on this product and many others that can be developed using these same designs and data.

DATED this 15<sup>th</sup> day of May, 2012.

  
\_\_\_\_\_  
DAVID ROBERTS

SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of May, 2012.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at: Boise, ID  
My commission expires: 12/24/2013



**CERTIFICATE OF SERVICE**

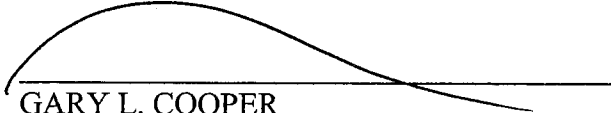
I hereby certify that on the 15<sup>th</sup> day of May, 2012, I served a true and correct copy of the foregoing to:

Brian K. Julian  
Stephen L. Adams  
ANDERSON, JULIAN & HULL  
C. W. Moore Plaza  
250 South Fifth Street, Suite 700  
P.O. Box 7426  
Boise, Idaho 83707-7426

☒ U.S. mail  
☐ Express mail  
☐ Hand delivery  
☒ Electronic delivery [bjulian@ajhlaw.com](mailto:bjulian@ajhlaw.com)  
[sadams@ajhlaw.com](mailto:sadams@ajhlaw.com)  
☐ Fax: 208-344-5510

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☐ Fax: 208-337-4854

  
GARY L. COOPER



## Zilog Independent Contractor Services Agreement

This Independent Contractor Services Agreement ("Agreement") is entered into by and between the undersigned INDEPENDENT CONTRACTOR or CONSULTANT, Sage Silicon Solutions, LLC, ("Contractor"), and Zilog, Inc. ("Zilog"). The parties agree as follows:

**1. Scope of Services:** Contractor will provide services to Zilog as set forth in Exhibit A ("Services") and, unless otherwise provided herein, shall furnish all necessary labor, materials and equipment at its own expense and liability. No work of any nature shall be provided outside the scope of Services described in Exhibit A without the prior written authorization of Zilog. Contractor understands and agrees that no Zilog employee has the authority to modify this Agreement orally; it may be modified only by means of a separate writing properly signed by an employee who has authority to do so. In this regard, Contractor hereby expressly and irrevocably waives any claim or right to assert any claim against Zilog based on an oral modification of the terms hereof or oral promises or representations relating to Contractor's provision of equipment, parts, other products or Services hereunder.

**2. Compensation:** Zilog agrees to compensate Contractor for Services in accordance with the terms and conditions set forth in Exhibit A, payable net forty-five (45) days after receipt of Contractor's invoice, which shall follow acceptance of deliverables and Services as specified in this Agreement. Contractor's invoice shall indicate the accepted Exhibit A deliverable(s), if applicable, for which payment is requested and be accompanied by appropriate supporting documentation acceptable to Zilog. Zilog may, in its sole discretion, reject and refuse payment on any invoice for work, services, expenses, collateral costs or other items which have not been previously reduced to writing in Exhibit A or a written amendment thereto properly executed pursuant to the requirements of Section 1. All invoices shall be submitted to Zilog no later than forty-five (45) calendar days following the date on which such Services were performed or completed; invoices submitted in contravention of this provision are subject to nonpayment by Zilog in its sole discretion. Contractor, by accepting payment from Zilog for a given deliverable, portion of Services or period of performance, waives further payment for the same. Contractor warrants that the amounts charged Zilog hereunder do not exceed amounts normally charged by Contractor to other customers for similar Services.

**3. Time for Performance:** Time is of the essence under this Agreement. Contractor shall commence and complete all Services within the time limits specified in Exhibit A. In agreeing to Exhibit A, Contractor acknowledges that time limits specified for the tasks described, if any, are reasonable and understands the importance to Zilog of timely performance. Zilog may reject any untimely performance tendered by Contractor and terminate this Agreement for default pursuant to Section 6 on account thereof. By accepting late or otherwise inadequate performance of any of Contractor's obligations, Zilog shall not waive its rights to thereafter require timely performance

or performance that strictly complies with this Agreement.

**4. Inspection and Acceptance:** Zilog shall have the right to inspect the performance of Services or progress on deliverables at any place and at reasonable times upon reasonable notice. Contractor shall notify Zilog promptly whenever it completes a milestone, deliverable or the Services. With respect to work in progress, Zilog may from time-to-time request correction of deficiencies, if any, and Contractor's reasonable assurances of progress or completion of milestones or deliverables and may terminate this Agreement for default pursuant to Section 6 if such corrections or assurances are not provided or if, in Zilog's reasonable judgment, progress on or performance of Services is unacceptable for legitimate business reasons. Upon completion of Services, Zilog shall have the right to make any final inspection or tests that Zilog shall deem advisable. Zilog may reject, and shall have no payment obligation or liability for, any deliverable, portion of Services or completion of Services which are not actually and reasonably provided in compliance with the Description of Services set forth in Exhibit A, the warranty provisions hereof or Zilog's reasonable standards. Correction of any deficiencies shall be at Contractor's sole expense and at no additional charge to Zilog. Should Zilog reject a given deliverable, portion of Services or the completion of Services, Zilog may, at its sole option, withhold payment on any outstanding invoices (including invoices under separate agreement or understanding with Zilog) until Contractor has corrected all deficiencies.

### 5. Contractor's Performance Standards, Obligations and Warranties

**5.1. Services:** Contractor warrants that it will provide only properly trained and qualified personnel and will perform all work under this Agreement in accordance with the highest standards and practices of care, skill and diligence observed by skilled professionals working under similar circumstances. Contractor further warrants that Services shall be free from defects in design and workmanship and shall conform to the requirements of this Agreement and its Exhibits, all specifications and work descriptions incorporated herein and any representations, descriptions or samples furnished by Contractor. Notwithstanding any acceptance of Contractor's work, if Services provided do not meet the warranties specified herein or otherwise applicable, Zilog may, at its option, (i) require Contractor to correct at no cost to Zilog any deficiencies or nonconformance, or (ii) correct any deficiencies or nonconformance itself and charge Contractor (or deduct from amounts due Contractor under this Agreement or otherwise) for the cost of such correction. These warranties shall extend for a period of twenty-four (24) months from the

A

date of completion of Services and are in addition to all other warranties, expressed or implied; and shall survive inspection, acceptance and payment by Zilog.

**5.2. Export Regulations:** Contractor warrants that it shall comply with all export laws and regulations applicable to the Services performed. Contractor further warrants that (1) all persons performing Services hereunder and all persons having access to Zilog confidential or proprietary information are United States citizens or holders of an Allen Registration Receipt Card, aka "Green Card" and (2) it has not and will not export, directly or indirectly, any technical data acquired from Zilog, or any of its affiliated or subsidiary companies, or any product utilizing or incorporating any such data, without first obtaining the written consent to do so from Zilog and, to the extent required by applicable law or statute, the U.S. Department of Commerce or other agency of the United States Government. Contractor commits to the warranties contained herein on its own behalf and on behalf of all of its employees, agents or contractors performing Services or accessing Zilog confidential or proprietary information hereunder.

**5.3. Health and Safety:** Contractor shall take all reasonable and necessary precautions and exercise reasonable care to prevent any and all injuries and illnesses. The safety of Contractor, its employees, agents or contractors on Zilog premises shall be the full responsibility of Contractor. Contractor further agrees to indemnify, hold harmless and defend Zilog and its affiliates, shareholders, directors, officers, employees and agents (with counsel reasonably approved by Zilog), from and against any costs, expenses, damages, claims, losses, penalties or liabilities (including without limitation court costs and reasonable fees of attorneys and other professionals) directly or indirectly arising out of or related to (1) any injury, illness, disability or death of Contractor, its employees, agents or contractors, regardless of whether the injury, illness, disability or death is related or unrelated to the Services or whether it is covered by worker's compensation insurance and (2) any negligent acts or omissions committed by Contractor, its employees, agents or contractors during or related to the performance of Services hereunder. Contractor's duty to indemnify in this manner shall exist even if the cost, expense, damages, claim, loss, penalty or liability is caused in whole or in part by the active negligence of an indemnified entity or person. Contractor agrees to comply at all times with all applicable state or federal environmental and occupational health and safety (including without limitation EPA OSHA) standards.

## **6. Term, Expiration & Termination**

**6.1. Term and Expiration:** This term of this Agreement shall coincide with the period during which Services are being performed pursuant to Exhibit A. It shall automatically expire after the completion and acceptance by Zilog of all Services pursuant to Section 4 hereof.

**6.2. Termination for Convenience:** Zilog may terminate this Agreement (in whole or as the same pertains to any of Contractor's individual employees, agents and contractors) for convenience at any time upon written notice to Contractor, effective immediately. Zilog shall pay Contractor pursuant to Exhibit A and under the terms and conditions of this Agreement for Services actually and reasonably performed or deliverables completed and accepted by Zilog

prior to Contractor's receipt of such notice. If this Agreement provides for payment on an hourly basis, payment will be made at the rate specified.

**6.3. Termination for Default:** Should Contractor (i) materially breach any of the provisions of this Agreement, (ii) fail for reasons other than an excused delay to perform the Services within the times specified and such breach is not cured within 10 business days of notice from Zilog, or (iii) fail to make progress for reasons other than an excused delay so as, in Zilog's reasonable estimation, to endanger performance in accordance with the terms hereof, Zilog may terminate this Agreement effective immediately by giving written notice thereof to Contractor and no further payment shall be due Contractor. Zilog may terminate Contractor's Services in its sole discretion under such circumstances. In the event of termination pursuant to this subsection, Zilog may procure, upon such terms and in such manner as Zilog may deem appropriate, Services reasonably sufficient to complete Contractor's performance obligations hereunder, and Contractor shall indemnify and be liable to Zilog for any excess costs occasioned thereby.

**6.4. Termination for Cause:** In the event that Contractor (i) admits its insolvency or inability to pay its debts or perform its obligations as they mature, or (ii) becomes the subject of any voluntary or involuntary proceeding in liquidation, dissolution, receivership, attachment or composition or general assignment for the benefit of creditors or pursues any other remedy under any other law relating to relief for debtors, then Contractor shall promptly provide reasonable assurances, as may be requested by Zilog from time to time, that it can and will perform its obligations under this Agreement. If such assurances are not timely received or are not reasonably satisfactory to Zilog, then Zilog may terminate this Agreement by written notice, effective upon receipt of the same, without cost or liability. Further, in the event that Contractor fails to respond to Zilog's attempts to contact Contractor for five (5) consecutive business days, then Zilog may likewise terminate this Agreement by written notice, effective upon receipt of the same, without cost or liability to Zilog, except when prior notice of Contractor's unavailability has been provided and accepted in writing by Zilog.

**6.5. Rights and Obligations Upon Termination:** Contractor shall stop all Services immediately upon Contractor's receipt of notice of termination, shall immediately transfer all work product and work in progress to Zilog, and shall immediately return all Zilog property, equipment, materials, documents and information (and copies or other materials reflecting same). Zilog shall return all property belonging to Contractor. These rights and obligations are in addition and without prejudice to other rights, obligations or remedies under this Agreement or law. Contractor shall have no right or remedy whatsoever against Zilog on account of Zilog exercising its right to terminate the Agreement according to the terms agreed herein.

**7. Delays:** Contractor shall use its best efforts to minimize any delay that may prevent its timely performance of Services and its obligations under this Agreement. Whenever timely performance has been or will be adversely affected by a delay, Contractor shall promptly notify Zilog, stating the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of such measures. If requested by Zilog, Contractor shall reduce

such matters to writing. If the delay is caused by events or conditions commonly known as "acts of God," or events such as fire, war, riot or the intervention of a governmental agency, the delay shall be deemed an excused delay. Any other delay and, at Zilog's option, Contractor's failure to provide the notice of delay required hereunder, shall be deemed an unexcused delay. Unanticipated costs or expenses and work stoppages shall not constitute grounds for an excused delay. In any event, and notwithstanding any other provision of this Agreement to the contrary, should Contractor's performance during the term of this Agreement be delayed for a cumulative period of fifteen (15) calendar days, Zilog may deem the delay unexcused under Section 6.3, regardless of the reason for or the events or conditions causing the delay.

**8. Insurance:** Prior to beginning Services hereunder, Contractor shall provide appropriate certificate(s) of insurance acceptable to Zilog demonstrating that it has in effect (and continuing for an appropriate term) the minimum levels of insurance coverage and other insurance coverage features specified in Exhibit B, covering activities and obligations undertaken by Contractor, its employees, agents and contractors pursuant to this Agreement, including without limitation, activities undertaken while on Zilog's premises and while traveling to and from Zilog's premises. Such coverage shall remain in force and effect so long as any services whatsoever are being performed for Zilog, whether pursuant to this Agreement or otherwise. Failure to comply with this provision shall be grounds for termination of Contractor for default hereunder.

## **9. Relationship of the Parties**

**9.1. No Employee Status:** In the performance of this Agreement, Contractor agrees that it is acting as an independent contractor, that neither it nor its employees, agents or contractors are the agents or employees of Zilog and that neither it nor its employees, agents or contractors are eligible for any Zilog employee benefits of any nature whatsoever nor any expectation of continued employment with Zilog. With respect to Contractor's employees, agents and contractors, Contractor shall have full and exclusive liability for, and shall indemnify, hold harmless and defend Zilog and its affiliates, shareholders, directors, officers, employees and agents against, any loss, cost, taxes, contributions, liability or claim related to unemployment insurance, worker's compensation, retirement benefits, health or life insurance, vacation and sick pay, bonuses, profit sharing, stock and savings plans, income and other governmental taxes and any other employment-related benefits, taxes, costs, obligations, safety requirements or duties of any nature whatsoever. Contractor shall maintain appropriate insurance to protect Zilog accordingly at all times during which Contractor performs work for Zilog. Contractor shall report as income to the appropriate governmental agencies all compensation received pursuant to this Agreement and shall pay all applicable taxes.

**9.2. Relationship with Zilog:** Except as expressly provided in this Agreement, Zilog shall have no direction, supervision or control over Contractor or its employees, agents or contractors and Contractor shall use its discretion regarding the method and manner of performing Services. However, upon Zilog's reasonable request, Contractor shall promptly remove or replace any of its employees, agents or contractors assigned to perform Services under this Agreement. Contractor shall promptly disclose in writing

any previous employment or temporary work relationship with Zilog of any nature whatsoever and any and all family or outside business relationships in any manner connected with Zilog or any of Zilog's employees or agents. Contractor represents that it fully disclosed all such matters to Zilog prior to entering into this Agreement.

**10. Confidentiality:** As a condition precedent to performing Services and receiving compensation hereunder, Contractor shall execute the standard Zilog Invention Assignment and Nondisclosure Agreement ("NDA") attached hereto as Exhibit C. Failure to sign the NDA in conjunction with the execution of this Agreement shall provide grounds for Zilog's termination for default pursuant to the termination provisions of this Agreement, and shall relieve Zilog of any obligation or liability whatsoever to Contractor (including, without limitation, the obligation to compensate Contractor for any Services).

## **11. Works Created Under This Agreement**

**11.1. Works Made For Hire:** Contractor agrees that any and all works of any form whatsoever made by or for Contractor, its employees, agents and contractors containing, disclosing or reflecting data or information developed, obtained, determined or discovered by Contractor, in whole or in part, in connection with or relating to Services performed under this Agreement shall be and are "work(s) for hire" to the maximum extent permissible under the copyright laws of the United States and any other applicable jurisdiction. Contractor agrees that upon the completion of Services or upon any termination of this Agreement for any reason, all such works will be placed in Zilog's possession and Contractor will not, without the written consent of Zilog, retain any right, title or interest in any such works.

**11.2. Assignment of Rights:** To the extent any subject matter developed by or for Contractor, its employees, agents and contractors are not eligible for "work for hire" status under any applicable copyright laws, Contractor acknowledges that the entire right, title and interest to such subject matter are assigned to Zilog pursuant to the NDA, provided, however, that Contractor retains ownership of any preexisting subject matter owned by Contractor prior to the Effective Date and incorporated into or used in connection with the subject matter developed for Zilog. Contractor acknowledges that such preexisting subject matter is licensed to Zilog pursuant to the NDA for use as incorporated into, or otherwise in connection with, that subject matter which is assigned to Zilog.

**11.3. Contractor Personnel:** Contractor warrants that it has executed agreements with each of its employees, agents and contractors, which agreements protect Zilog and give effect to the provisions of this Section 11 and each of its subsections.

## **12. Intellectual Property Protection**

**12.1. Warranty of Ownership:** Contractor warrants that (i) it has sufficient ownership interest(s) or rights to use all Prior Intellectual Property Rights needed for it to perform the Services and its obligations under this Agreement, and has the authority to do so without infringing the rights of any third party or creating any financial obligation to any third party, and (ii) Contractor shall ensure that any third-party materials (including derivative works thereof) made or obtained by



Contractor and incorporated into the Services or any accompanying work product produced by Contractor are obtained on a basis sufficient to give effect to the ownership provisions and license terms provided generally in this Agreement, without imposing any additional obligation on Zilog, its distributors, contractors, licensees, or customers.

**12.2. Infringement, Indemnity:** At Zilog's request, Contractor shall, at its sole cost, indemnify, hold harmless and defend (with counsel reasonably approved by Zilog), Zilog and Zilog's affiliates, shareholders, directors, officers, employees and agents from and against any loss, cost, liability or claim (including without limitation court costs and reasonable fees of attorneys and other professionals) arising out of or related to any claim that the performance of the Services by Contractor, Zilog's use of any subject matter developed by Contractor pursuant to the Services, or Zilog's exercise anywhere in the world of the rights implied or granted to it under this Agreement, infringes or misappropriates any Intellectual Property Right of any third party; provided, however, that Contractor shall have no liability to indemnify Zilog for any claim or action where infringement is attributable to Contractor's incorporation of Zilog-supplied or Zilog-specified designs or processes without any implementation choices or discretion being exercised by Contractor. Zilog may, at Zilog's expense, participate in the defense thereof with counsel of Zilog's choosing. If Contractor fails to defend the claim in a reasonable manner appropriate to the claim asserted, Zilog may defend the claim and Contractor agrees to reimburse Zilog on an ongoing basis for all fees and other expenses incurred within thirty (30) days after Zilog invoices Contractor therefor. In case of any alleged infringement of misappropriation of a third party's Intellectual Property Rights, Contractor agrees, at its expense and at Zilog's sole option, either to: (i) procure for Zilog and its customers the ownership, use, distribution or other rights granted or implied under this Agreement; (ii) modify the allegedly infringing item to remove the alleged infringement, without materially impairing performance or compliance with this Agreement; (iii) replace the allegedly infringing item with a non-infringing item, without materially impairing performance or compliance with this Agreement; or (iv) refund to Zilog the compensation paid which relates to the infringing item. The foregoing is in addition to any other rights Zilog may have under this Agreement or at law or equity.

**12.3. Definitions:** For the purposes of this Agreement, "Intellectual Property Rights" shall mean patents, copyrights, trade secrets, trademarks, rights in mask works, database rights, and any other form of industrial property, moral rights, or other intellectual property recognized under the law of any country or jurisdiction, including without limitation any rights to apply for, applications for, registrations of, or issuances of, any of the foregoing. "Prior Intellectual Property Rights" shall mean all Intellectual Property Rights owned or otherwise controlled by Contractor or any other party prior to the date Contractor first begins to perform Services, or otherwise independently of this Agreement.

**13. Indemnity:** Notwithstanding any other provision of this Agreement, Contractor shall, at its sole cost, indemnify, hold harmless and defend Zilog and its affiliates, shareholders, directors, officers, employees and agents (with counsel reasonably approved by Zilog), from and against any costs, damages, claims, losses or liabilities (including without limitation court costs and reasonable fees of attorneys and other professionals) directly or indirectly arising out of or

related to any breach of this Agreement, failure to comply with any law or regulation or the negligence or willful misconduct of Contractor or its employees, agents and contractors.

**14. Conflicts:** Contractor represents and warrants that its performance of this Agreement will not conflict with any other contract, agreement or transaction to which Contractor is bound or is pursuing and, while performing Services, Contractor will not engage in any such conflicting pursuits or services or enter into any contract, agreement or transaction in conflict with this Agreement. Contractor also agrees not to provide services of a nature similar to the Services performed hereunder to major competitors of Zilog while providing such Services, without the prior written consent of an authorized representative of Zilog. Accordingly, Contractor, prior to execution of this Agreement and during the performance of Services hereunder, shall disclose to Zilog (on an ongoing basis) the companies or entities with which it is currently engaged and the general nature of the services or work being performed by Contractor for the same. Zilog shall not divulge such information to third parties without Contractor's prior written consent.

**15. Gratuities:** Contractor represents that it has not offered or given and shall not offer or give any employee, agent, or representative of Zilog any gratuity with a view toward securing any business from Zilog or influencing such person with respect to the transaction of business between the parties. Any violation of this provision shall be considered a material breach of this Agreement and any other agreement between the parties.

**16. Solicitation of Employment:** Each party agrees not to recruit, divert or solicit the employment of an employee of the other during the period of performance of Services and for one year following the completion thereof.

**17. Use of Resources:** If given authorization to utilize Zilog computer or other resources, Contractor agrees to use same exclusively in performing Services and for no other purpose. Any other or unauthorized use shall be a material breach hereof and provide grounds for Zilog's termination for default pursuant to the termination provisions of this Agreement. Further, in the event that Zilog property or equipment on loan to Contractor is not returned upon request in the same condition in which it was provided to Contractor (normal wear and tear excluded), Zilog may, at its option, reasonably withhold payment on any amounts due Contractor (whether under this Agreement or otherwise) or deduct from any such amounts due the cost of repair or reasonable reduction in value to Zilog of any missing or damaged property or equipment. Upon such termination, Zilog does not waive any possible legal action arising from the unauthorized use of Zilog resources. Contractor and all of its employees, agents and contractors who perform Services under this Agreement shall follow Zilog security procedures, restrictions and other rules (including permission for Zilog to perform background investigations, if appropriate) while on Zilog premises or utilizing any Zilog resources and shall at all times safeguard Zilog's real, personal and intangible property. Without limiting the generality of the foregoing, if required to access Zilog's network or other computer resources, Contractor shall execute the standard Zilog Network Access Agreement ("Network Agreement") attached hereto as Exhibit F. Failure to sign the Network Agreement in advance of accessing any of Zilog's network or computer resources shall provide



grounds for Zilog's termination for default pursuant to the termination provisions of this Agreement, and shall relieve Zilog of any obligation or liability whatsoever to Contractor (including, without limitation, the obligation to compensate Contractor for any Services).

**18. Background Investigations:** Contractor, and all its employees, agents and contractors shall be subject to a security background investigation at Zilog's sole option and expense and Contractor hereby consents to the same. Such background investigation may include, without limitation, the following information: verification of social security and motor vehicle department information, verification of previous employment and references, verification of current and former addresses, criminal conviction history (previous five years) and litigation history (previous five years). The conduct of all security investigations hereunder and the use of the information obtained shall be strictly in compliance with all applicable federal, state and local laws and regulations.

**19. Compliance with Applicable Laws and Policies:** In the performance of this Agreement, Contractor shall at all times comply with all applicable governmental laws, statutes, ordinances, rules, regulations, orders and other requirements, including without limitation such governmental requirements applicable to export administration regulations (including without limitation restrictions upon transfer of intellectual knowledge or technical data), environmental protection, wages, hours, equal employment opportunity, nondiscrimination, health, safety and working conditions. Upon Zilog's request, Contractor shall provide Zilog with documentation demonstrating Contractor's compliance with such governmental requirements. Contractor, and each of its employees, agents and contractors on site at Zilog during the provision of Services hereunder, shall comply with all Zilog workplace, safety and other employee policies. Any violation of this provision shall be considered a material breach of this Agreement.

**20. Governing Law:** This Agreement will be governed, construed and enforced in all respects by the laws of the State of California without regard to conflict of laws considerations. Implementation, jurisdiction and venue of any arbitration, litigation or other dispute resolution modality between the parties arising out of or relating to the Services, the terms and conditions hereof or any alleged breach of this Agreement or obligation hereunder will lay exclusively within the boundaries of Santa Clara County, California, and both parties expressly submit and consent in advance to such exclusive implementation, jurisdiction and venue; provided that nothing in this Agreement (including without limitation provisions relating to arbitration of disputes) shall be deemed or operate to preclude either party from bringing suit or taking other legal action in any other jurisdiction to enforce a judgment, order or other decision. If any provision of this Agreement, or the application thereof, is for any reason and to any extent determined by an adjudicator to be unenforceable under applicable law, the remaining provisions of this Agreement will remain in effect and be interpreted so as to best reasonably effectuate the intent of the parties and any provision deleted herefrom shall be replaced by a valid substitute provision which implements or best effectuates the parties' original intent.

**21. Notices:** All notices shall be in writing and shall be deemed given on the date of personal delivery; the date of confirmed telex or facsimile transmission; or, if given by mail

or overnight delivery. Any form of confirmed actual delivery is sufficient and shall in no event be deemed given later than written confirmation thereof. Notices shall be addressed to Zilog and Contractor at their respective addresses appearing in the signature block of this Agreement, but each party may change its address by written notice in advance.

**22. Disputes:** Contractor agrees and warrants that it will not assert and, as a material consideration of this Agreement, hereby waives any right to assert, any claim against Zilog based in whole or in part upon any alleged oral agreement or understanding which has not been reduced to writing and signed by authorized representatives of both parties. To the fullest extent permitted by law, the parties waive any right to jury trial with respect to any claim arising out of or related to the Services, the terms and conditions hereof or any alleged breach of this Agreement or obligation hereunder. Excepting only Zilog's right to make a claim for injunctive or provisional relief, any such claim or dispute which cannot be resolved by negotiation or mediation (which must be first attempted), shall be decided by confidential binding arbitration before a single arbitrator. Part 3, Title 9 of the California Code of Civil Procedure shall control, including right to discovery (CCP Section 1283.05). The arbitrator shall be a retired Superior Court judge or an attorney admitted and in good standing before the State Bar of California. If the parties cannot agree on an arbitrator, the Superior or Federal District Court in the county of venue shall appoint the arbitrator. The filing of a judicial action by Zilog to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not be in contravention of this section and shall not constitute a waiver of mediation and arbitration rights. The parties shall equally split the arbitrator's fees.

**23. Injunctive Relief:** A claim for injunctive relief to prevent Contractor from disclosing Confidential Information or trade secrets or to preclude Contractor's conduct in violation this Agreement prior to or during the pendency of any mediation or arbitration proceeding may be brought in the state or federal courts located in Santa Clara County, California. Both parties submit to personal jurisdiction and venue of such court(s) for the purpose of resolving any such matter. Seeking such injunctive relief shall not constitute an election of remedies nor foreclose Zilog from thereafter resolving disputes by mediation and arbitration, as set forth above.

**24. Attorney's Fees:** In any judicial proceeding or arbitration adjudicating a dispute relating to or arising out of the Services, the terms and conditions of this Agreement or any alleged breach of an obligation hereunder, the prevailing party is entitled to recover all reasonable costs, fees and expenses ("Costs") associated with such proceeding (including without limitation reasonable Costs of attorneys, expert witnesses, consultants and other professionals), except that (i) if the prevailing party has at any time refused a written settlement offer pertaining to such dispute which equates to or is more favorable to the prevailing party than the prevailing party's actual recovery or the outcome determined in such judicial proceeding or arbitration, then no such Costs shall be awarded, and (ii) in any event, any such Costs to be awarded must bear a reasonable relation to such actual recovery.

**25. Public Disclosures:** Contractor shall not use any Zilog trademarks, service marks, visual product

representations, trade names, logos or other commercial or product designations without Zilog's express prior written consent. Neither party shall identify or make reference to the other in any advertising or other promotional modality regardless of its form without explicit prior written consent.

**26. Waiver:** Except as otherwise specifically set forth herein, the failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other party that is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or as waiver of any future breach or subsequent wrongful conduct.

**27. Survival:** The following obligations of the parties shall survive the expiration or other termination of this Agreement, together with any definitions, exhibits and attachments necessary for their proper interpretation: Subsection 5.1, Subsection 5.2, Subsection 6.5, Section 8, Subsection 9.1, Section 10, Section 11, Section 12, Section 13, Section 16, Section 20, Section 22, Section 23, Section 24, Section 25 and Section 28.

**28. Successors:** The rights and liabilities of the parties under this Agreement shall bind and inure to the benefit of the parties' respective successors and permitted assignees.

**29. Entire Agreement:** This Agreement, together with all Exhibits hereto (which are incorporated herein as if set forth in full), constitutes the entire understanding and agreement

of the parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, representations and agreements, whether written or oral, with respect to such subject matter. No statements or agreements written or oral, made prior to the signing hereof, shall vary or modify the terms hereof and neither party shall claim any amendment, modification, or release from any provisions hereof unless by mutual agreement in writing, signed by Zilog's and Contractor's authorized representatives. No modification shall be affected by the acknowledgment or acceptance of orders, invoices, bills of lading, confirming forms, shipping forms and the like containing different or additional terms and conditions.

**30. No Assignment by Contractor:** Contractor may not assign, consign, subcontract or otherwise engage third parties in any fashion whatsoever to perform Services under this Agreement without the specific prior written consent of an authorized employee of Zilog, and any such attempted assignment, consignment, subcontracting or engagement shall be void. Should Zilog give such written consent, Contractor shall secure from each assignee, consignee and subcontractor or other third party its written agreement to comply with the terms and conditions of this Agreement. Zilog may assign this Agreement at any time to an affiliated, subsidiary or successor company.

The parties have caused this Agreement to be executed by their duly authorized representatives.

**"Contractor"**

Sage Silicon Solutions, LLC  
Corporation? Yes ☒ No ☐

**Principal Place of Business:**

2203 E Bowstring St  
Meridian, ID 83642  
Telephone: (208)954-9316

David A. Roberts  
Signature

David A. Roberts  
Printed Name

Business Management Member  
Title

15 February 2011  
Date

27-4826226  
Social Security or Tax ID Number

**"Zilog"**

ZILOG, INC.

**Principal Place of Business:**

1590 Buckeye Dr.  
Milpitas, California, 95035  
(408) 558-8500

Akio Kawai  
Signature

Akio Kawai  
Printed Name

Director of Global Human Resources  
Title

15 February 2011  
Date

# Contractor Services Agreement — EXHIBIT A —

## STATEMENT OF WORK

Under the terms of the Master Contractor Services Agreement between Zilog, Inc. and Sage Silicon Solutions, LLC. dated 15 February 2011, Contractor agrees to provide professional services in the area of ~~development of services products~~

Contractor shall provide the following Services:

- ~~\_\_\_\_\_~~
- Evaluate IP candidates and assist in IP selection
- Integrate controller
- Verify functionality, developing test fixtures and functional verification code as needed
- Develop corresponding chapter in Product Specification (and include ~~\_\_\_\_\_~~ information)

- ~~\_\_\_\_\_~~
- Extract IP schematic and modify circuit design to comply with ~~\_\_\_\_\_~~
- Verify modified circuit design

### Timers

- ~~\_\_\_\_\_~~
- ~~\_\_\_\_\_~~
- ~~\_\_\_\_\_~~
- ~~\_\_\_\_\_~~
- ~~\_\_\_\_\_~~
- ~~\_\_\_\_\_~~
- ~~\_\_\_\_\_~~
- Verify functionality, developing test fixtures and functional verification code as needed

- ~~\_\_\_\_\_~~
- ~~\_\_\_\_\_~~
- Verify functionality, developing test fixtures and functional verification code as needed

### Verification

- Write functional tests for new features
- Perform chip level functional verification
- Analyze code coverage and achieve industry norms

### Other

- Answer project related questions and perform additional project tasks as assigned

Zilog Contact: David Staab

**Compensation:**

**\$65/hr: Design and logic/circuit simulation**

**\$45/hr: Full custom layout design and verification**

**Billed hours breakdown to be provided with invoice**

**Estimated Completion Date: 31 August 2011**

**Note: If Contractor's proposal and statement of work (or similar document) is attached hereto or otherwise referenced in any way in this Agreement, it shall be for reference purposes only with regard to clarification and description of Services. The parties specifically agree that any terms and conditions or other extraneous matter included in any Contractor document attached hereto and in any other manner referenced herein which do not specifically relate to description/clarification of Services shall be wholly inapplicable to this Agreement and are hereby deleted therefrom and deemed void. With regard to any inconsistency or conflict between any such Contractor document and the provisions of this Agreement, the provisions of this Agreement shall control.**

Manager

By: 

Name: David Staab

Date: 15 February 2011


Contractor

By: 

Name: David A. Robert

Date: 15 February 2011

Human Resources

By: 

Name: Akio Kawai

Date: 15 February 2011

# Services Agreement — EXHIBIT B —

## INSURANCE PROTECTION

1. The following chart(s), together with Sections 2 through 7 below, specify the minimum types and amounts of insurance coverage which must be maintained (pursuant to the Services Agreement, Section 8) by Contractor for it, its employees and any agents and contractors prior to performance of any Services hereunder. Contractor shall deposit with Zilog's Chief Financial Officer properly executed certificate(s) of insurance which demonstrate that Contractor has in effect such coverage (and such other types and amounts as reasonably specified in writing by Zilog's Chief Financial Officer).

### Insurance

### Minimum Limits of Liability

A. Workers' Compensation (or proof of medical insurance if workers' compensation coverage is not applicable). Employer's Liability also required (if available).	\$1,000,000 per occurrence
B. Commercial General Liability, including liability coverage for bodily injury and property damage ("CGL"). Zilog must be named as an additional insured under the certificate of insurance. CGL policy must include contractual liability coverage.	\$1,000,000 per occurrence; \$2,000,000 general aggregate.
C. Automobile Liability, if the use of motor vehicles required (including liability coverage for bodily injury and property damage)	\$ _____ per occurrence
D. Theft and Employee Dishonesty Coverage	\$ 1,000,000 per occurrence
E. Professional Liability (including errors and omissions coverage)	\$ 1,000,000 per occurrence

2. Contractor also hereby agrees to waive any rights of subrogation which Contractor may have against Zilog under applicable Worker's Compensation Statutes. In addition, Contractor shall use reasonable efforts to obtain a waiver of subrogation endorsement on behalf of Zilog.

3. Contractor shall provide Zilog with no less than thirty (30) days written notice in advance, of any reduction or cancellation of any the above coverages.

4. Commercial General Liability and Automobile Liability coverages, if required, shall include liability coverage for injury or damages (a) assumed in a contract or agreement pertaining to Contractor's business and (b) arising out of Contractor's product, services or work. Contractor's insurance shall be primary, and Contractor hereby agrees that any applicable insurance maintained by Zilog shall be excess and non-contributing. The Commercial General Liability and Automobile Liability coverages, if required, shall name Zilog as an additional insured, and shall contain a severability of interest clause.

5. All insurance carriers must have ratings reasonably satisfactory to Zilog. Zilog reserves the right to require Contractor to obtain additional or different insurance coverages at Zilog's sole cost.

6. Neither Contractor's satisfaction of these insurance coverage requirements nor any approval or waiver by Zilog of any condition, substitution, requirement or other insurance-related item shall in any manner limit, dilute or qualify any of the liabilities and obligations otherwise assumed by Contractor under this Agreement, including without limitation Contractor's indemnification obligation, which liabilities and obligations shall be cumulative with respect to these insurance requirements.

7. Should Zilog agree in writing (pursuant to Services Agreement, Section 30) that a portion of the Services under this Agreement may be assigned, consigned or subcontracted, Contractor shall either require each of its assignees, consignees, or subcontractors (of any tier) to satisfy all of these insurance coverage requirements, or Contractor may insure such assignees, consignees, or subcontractor(s) under its own policies. Regardless of the option selected by Contractor, Contractor shall retain the sole responsibility and obligation to comply with the insurance coverage requirements set forth in this Agreement for and on behalf of any and all parties performing Services hereunder. Any such agreement by Zilog under Section 30 shall be deemed and interpreted hereunder to be subject to this qualification and condition, whether or not specifically set forth therein.

**Services Agreement**  
**- EXHIBIT C -**

**CONTRACTOR INVENTION ASSIGNMENT AND NON-DISCLOSURE AGREEMENT**

This INVENTION ASSIGNMENT AND NONDISCLOSURE AGREEMENT ("Agreement") is entered into by and between Zilog, Inc., a Delaware corporation ("Zilog") with principal offices located at 1590 Buckeye Dr., Milpitas, CA 95035 and Sage Silicon Solutions, LC. ("Contractor"), having an address at 2203 E. Bowstring St Meridian, ID 83642. In consideration of and as a condition of Contractor's initial or continued engagement with Zilog, Contractor hereby acknowledges and agrees to the following.

1. Engagement; No Conflict. Contractor will perform for Zilog such duties as may be designated by Zilog from time to time in accordance with the Zilog Independent Contractor Services Agreement dated 02/15/2011 (the "Services Agreement"). Contractor agrees that its engagement with Zilog is for the term, and may be terminated by Zilog as specified in, the Services Agreement. Similarly, Contractor may terminate its engagement as specified in the Services Agreement. During the period of engagement by Zilog, Contractor will perform its duties faithfully, diligently and to the best of Contractor's abilities, subject to and in compliance with all laws, rules, regulations and policies applicable from time to time to Zilog's personnel. Contractor will not engage in any activity that does, will or could in good faith be reasonably deemed to be detrimental to the best interests of Zilog or which violate Zilog's policies regarding business conduct or ethics.
2. Prior Zilog Work. Contractor acknowledges that the entire right, title and interest in all previous work done by it for Zilog, relating in any way to the conception, design, development, manufacture or support of products or technology for Zilog (including all intellectual property rights related thereto), is the sole property of Zilog, and that Contractor has neither retained, nor granted to any third party, any right, title or interest therein.
3. Proprietary Information. Contractor's engagement with Zilog creates a relationship of confidence and trust between Zilog and Contractor with respect to proprietary or confidential information that is:
  - (a) applicable to the business of Zilog; or
  - (b) applicable to the business of any client or customer of Zilog, which may be made known to Contractor by Zilog; or
  - (c) otherwise learned by Contractor during the period of Contractor's engagement with Zilog.

(all of the foregoing hereinafter referred to as "Zilog Proprietary Information"). By way of illustration, but not limitation, Zilog Proprietary Information includes any and all technical and non-technical information (whether or not eligible for protection via patents, copyrights, maskworks, trade secrets, or other intellectual property laws) related to the current, future or proposed business of Zilog. For example and without limitation,



Zilog Proprietary Information may include technologies, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source code documents, content, data, formulae, research plans or results, experimental data, development data, design details and specifications, engineering information, financial information, procurement requirements or data, manufacturing data, customer lists, business forecasts, and sales, merchandising and marketing plans and information.

In addition, during Contractor's engagement with Zilog, Contractor may obtain access to or knowledge of proprietary or confidential information of third parties who disclose such information to Contractor or Zilog in the course of Zilog's business ("Third Party Proprietary Information").

Zilog Proprietary Information and Third Party Proprietary Information are hereinafter collectively referred to as "Proprietary Information."

4. Nondisclosure of Proprietary Information. At all times, both during Contractor's engagement by Zilog and after its termination, Contractor will keep in the strictest confidence and trust all Proprietary Information, and will not use or disclose any Proprietary Information or anything derived from or relating to it without the prior written consent of Zilog or its third party owner (as the case may be), except as may be necessary in the ordinary course of performing Contractor's duties as an independent contractor or consultant of Zilog.
5. Return of Materials. Upon termination of Contractor's engagement with Zilog, or at the request of Zilog at any time, Contractor will: (a) return to Zilog all tangible material in Contractor's possession or control incorporating Proprietary Information; (b) return to Zilog a copy of, and thereafter destroy or irrevocably erase, all electronically stored or other intangible material in Contractor's possession or control incorporating Proprietary Information; (c) thereafter refrain from using any of the foregoing; and (d) certify the same in writing using the certification set forth as Exhibit E.
6. Inventions. As used in this Agreement, the term "Inventions" means any subject matter eligible for protection under patent, copyright, trade secret, trademark, mask work, or data rights laws, or as any other type of intellectual property right.
7. Disclosure of Pre-Zilog Inventions. Contractor has identified on Exhibit D attached hereto all Inventions relating in any way to Zilog's actual or anticipated business which Contractor owned or controlled prior to Contractor's engagement with Zilog ("Pre-Zilog Inventions"), and Contractor represents that such list is complete and accurate in all material respects. Contractor represents that it has no rights in any Inventions other than those Pre-Zilog Inventions identified on Exhibit D. If there are no Inventions identified on Exhibit D, Contractor represents that there are no such Pre-Zilog Inventions.
8. Ownership of Zilog Inventions; License of Pre-Zilog Inventions. Contractor hereby assigns to Zilog or its designee, its entire right, title and interest in and to all Inventions ("Zilog Inventions"), and any associated intellectual property rights (including the right to sue third parties for past infringement), which: (a) Contractor may solely or jointly conceive, develop or reduce to practice during the period of Contractor's engagement with Zilog that, in whole or in part, relate to Zilog's actual or anticipated business; (b)



were developed on Zilog's time or with the use of any of the equipment, supplies, facilities, technology, Proprietary Information or other property of Zilog; or (c) resulted or was derived from any work Contractor performed for Zilog. Contractor hereby agrees promptly to disclose and describe to Zilog any and all potentially patentable Zilog Inventions. Contractor hereby grants Zilog a royalty-free, irrevocable, worldwide, unrestricted license (with rights to sublicense through multiple tiers of distribution) to make, use, sell, offer for sale, import, reproduce, distribute, perform, display, and create derivatives or improvements of, any Pre-Zilog Inventions incorporated into, used in the development or operation of, or otherwise used in connection with, any Zilog Inventions. Notwithstanding the foregoing, Contractor agrees that it will not incorporate or use any Pre-Zilog Inventions in connection with any Zilog Inventions without the prior written consent of Zilog's General Counsel (or, in the absence of Zilog's General Counsel, Zilog's Director of Intellectual Property). Contractor also agrees that it will not incorporate or use any third party Inventions (including so-called open source or public domain software) in connection with any Zilog Inventions without the prior written consent of Zilog's General Counsel (or, in the absence of Zilog's General Counsel, Zilog's Director of Intellectual Property).

9. Nonassertion of Moral Rights. In addition to the foregoing assignment of Inventions to the Company, Contractor hereby irrevocably waives and agrees never to directly or indirectly assert against Zilog and (its customers), any and all Moral Rights Contractor may have in or with respect to any Zilog Invention, even after termination of Contractor's engagement relationship with Zilog. "Moral Rights" mean any rights to claim authorship of an Invention, to object to or prevent the modification of any Invention, or to withdraw from circulation or control the publication or distribution of any Invention, and any similar right, existing under judicial or statutory authority of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."

10. Cooperation in Perfecting Rights to Inventions.

Contractor agrees to perform, during and after Contractor's engagement with Zilog, all acts deemed necessary or desirable by Zilog to permit and assist it, at its expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Inventions hereby assigned to Zilog. Such acts may include, but are not limited to, execution and delivery of documents, and other assistance or cooperation, pertaining to the application, prosecution, issuance, registration or enforcement of patents, copyrights, maskworks or other intellectual property rights.

In the event that the Company is unable after reasonable efforts to secure Contractor's signature to any document required to obtain or enforce any patent, copyright, maskwork or other intellectual property right with respect to any Zilog Inventions, Contractor hereby irrevocably designates and appoints Zilog and its duly authorized officers and agents as Contractor's agents and attorneys-in-fact to act for and on Contractor's behalf to execute and file any such document and to do all other lawfully permitted acts in furtherance of the foregoing.

11. No Violation of Rights of Third Parties. In Contractor's engagement with Zilog, Contractor will not: (a) breach any nondisclosure or nonuse obligation with respect to any third party's (including any former employer's) confidential or proprietary information, acquired by Contractor prior to Contractor's engagement with Zilog; or (b)

without written authorization of the third party, disclose to Zilog, or induce Zilog to use, any confidential or proprietary information belonging to such third party. Contractor is not a party to any other agreement which will interfere with Contractor's full compliance with this Agreement. Contractor agrees not to enter into any agreement, whether written or oral, in conflict with the provisions of this Agreement.

12. Term and Termination; Survival. This Agreement shall be effective as of the date Contractor first performed services for Zilog as an independent contractor or consultant ("Effective Date"), which Contractor acknowledges may be earlier than the date on which this Agreement is being executed. This Agreement shall expire on the date that Contractor is no longer engaged to perform services for Zilog, except that the following provisions of this Agreement shall survive the termination of Contractor's engagement with Zilog: (a) any provision which is stated to be perpetual, or irrevocable, or whose terms indicates post-engagement applicability; and (b) sections 2, 4, 5, 8, 9, 10 & 15-23. Immediately upon termination of Contractor's engagement, Contractor will execute and deliver to Zilog the certification set forth in Exhibit E.
13. Duty Not To Compete. During Contractor's engagement with Zilog, Contractor will not, without Zilog's express written consent, engage in any business, or invest in or assist in any manner any business, which directly or indirectly competes with the business or future plans of Zilog, except for less than a 5% investment in the securities of a publicly traded company.
14. Non-Solicitation. During the term of Contractor's engagement with the Company and for a period of one year, Contractor will not directly or indirectly solicit or encourage any employees, consultants, suppliers or customers of Zilog to terminate or alter their relationship with Zilog or cause others to do so.
15. Notification. Contractor hereby authorizes Zilog to notify Contractor's actual or future employers of the terms of this Agreement.
16. Injunctive Relief. A breach of any of the promises or agreements contained herein may result in irreparable and continuing damage to Zilog for which there will be no adequate remedy at law, and Zilog shall be entitled to seek and obtain injunctive relief and/or a decree for specific performance, and such other relief as may be proper.
17. Notices. Any notice required or permitted pursuant to this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of receipt; (c) by telecopy or facsimile transmission upon acknowledgement of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. All notices to be delivered to Zilog shall be made to the attention of the General Counsel, with a copy to the Director of Intellectual Property.
18. Governing Law; Jurisdiction. This Agreement shall be governed in all respects by and construed in accordance with the laws of the State of California, except for any conflicts of laws principles or provisions. Contractor agrees to the jurisdiction of the state and federal courts located in the state of California, as well as the courts in any other jurisdiction in which Contractor performs services for Zilog.

19. Severability. Should any of the provisions of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions shall not be affected or impaired thereby.
20. Waiver. The waiver by Zilog of a breach of any provision of this Agreement by Contractor shall not operate or be construed as a waiver of any other or subsequent breach by Contractor.
21. Assignment by Zilog. Zilog shall have the right to assign any right under, delegate any obligation under, or transfer this Agreement.
22. Entire Agreement. Contractor agrees that this Agreement, together with its exhibits, constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all previous and contemporaneous understandings, whether written or oral. This Agreement may be amended or modified only with the written consent of Zilog.
23. Construction. The verb "to include" (and all variations thereof) shall not be construed as a term of limitation unless expressly indicated by the context in which it is used.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as follows.

ZILOG, INC.

By: Akio Kawai

Name: Akio Kawai

Title: Director of Global Human Resources

Date: 15 February 2011

"Contractor"

By: David A. Roberts

Name: David A. Roberts

Address: 2203 E. Bowstring St., Meridian, ID

Date: 15 February 2011

**EXHIBIT D**

## Pre-Zilog Inventions

**Identify all Inventions made, owned or controlled (in whole or in part) by Contractor relating in any way to Zilog's actual or anticipated business, which were made or acquired prior to Contractor's engagement with Zilog. Be as specific as possible without violating any confidentiality or other legal obligation to any third party.**

### Name and Description

None

(Attach additional sheets if necessary)

**EXHIBIT E**

**Certification Upon Termination of Engagement**

**Contractor hereby certifies that:**

- (a) Contractor has:
- (i) returned to Zilog all tangible Proprietary Information; and
  - (ii) returned to Zilog a copy of, and subsequently destroyed or irrevocably erased, all electronically stored or other intangible Proprietary Information;
- as required by Section 5 of the Contractor Invention Assignment and Nondisclosure Agreement ("Agreement");
- (b) Contractor understands and will honor its post-engagement obligations under the Agreement, including without limitation:
- (i) protecting Zilog's Proprietary Information pursuant to Section 4 of the Agreement;
  - (ii) refraining from asserting any Moral Rights pursuant to Section 9 of the Agreement;
  - (iii) assisting Zilog in perfecting title to, and enforcing, its intellectual property rights pursuant to Section 10 of the Agreement; and
  - (iv) the 1 year non-solicitation requirement pursuant to Section 15 of the Agreement.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Witnessed By:

\_\_\_\_\_

Name: \_\_\_\_\_  
Zilog, Inc. Human Resources

**Services Agreement  
- EXHIBIT F -**

**NETWORK ACCESS AGREEMENT**

Effective Date: 15 February 2011

User (Company/Individual):

Sage Silicon Solutions, LLC.

Address: 2203 E. Bowstring St.

Meridian, ID 83642

This Agreement is made by and between Zilog Incorporated ("Zilog"), located at 1590 Buckeye Dr., Milpitas, CA and the "User" identified above. Zilog and User agree as follows:

1. **Network Use.** Zilog grants User and its authorized employees listed in Attachment A ("Authorized Personnel") the nonexclusive, revocable right, subject to the terms of this Agreement, to obtain access to and use Zilog's Network (as defined below).

As used herein, "Network" is defined as any communication channels connecting Zilog data devices to each other and any interface devices owned, operated, administered, maintained, leased or otherwise controlled by Zilog, that are used to connect those channels to other channels or are used to provide a user interface to those channels that are necessary to accomplish the Permitted Uses specified in Paragraph 2 below.

The rights of any Authorized Personnel under this Agreement are conditioned on the Authorized Personnel: (a) having been provided with a copy of this Agreement; (b) having signed Attachment A of this Agreement before they are allowed access to the Network; (c) honoring any additional access restrictions stated in Attachment A; and (d) remaining employed by User. User agrees to remain personally responsible for any breach of this Agreement by any of its Authorized Personnel. The list of Authorized

Personnel may be modified, subject to the terms contained in this Agreement. User agrees to notify Zilog within 48 hours when any of the Authorized Personnel cease being employed by User.

User agrees to comply with all instructions given by the Zilog IT Department.

2. **Permitted Uses.** User's access to and use of the Network shall be only for the purposes set out below.

- a. Reason for access:  
Development of Z8F6480  
products

- b. Ultimate server and/or data device to be accessed:  
fssj1, license servers in Milpitas,

- c. Type of Activity (e.g., email, read, transfer and/or edit files):  
email, access design database, perform simulations

The above-listed purposes shall constitute the sole "Permitted Uses"; any other use of the Network and any data devices attached thereto is strictly prohibited and may subject User to civil and criminal prosecution. Such prohibited uses include, but are not limited to, the following:

- a. Accessing or using unauthorized resources;
- b. Exhausting Network resources;

- c. Modifying, viewing, copying or obtaining programs or data if not authorized to do so;
  - d. Inserting any program or data except for the Permitted Uses;
  - e. Accessing or using the Network in any manner that incurs fees or expenses to Zilog;
  - f. Changing the topology of the Network;
  - g. Using the Network to gain unauthorized access to any third party computer or network; or
  - h. Using the Network to send so-called "spam" email.
3. **Fees.** Access to and use of the Network shall be at User's expense.
4. **Equipment and Access Procedures.** Zilog shall provide User with certain equipment and/or passwords to enable the Authorized Personnel to access the Network. User shall not share the equipment with any third party. User shall take reasonable steps to secure physical access to the equipment and shall use passwords in compliance with Zilog's password policy. User agrees to assume sole responsibility for the equipment and to pay Zilog replacement costs for any damage to or loss of the equipment. User agrees to notify, and is solely responsible for notifying, Zilog of the loss, damage or theft of the equipment by the most expeditious means available. Zilog reserves the right to modify the procedures and hardware needed to access the Network at any time.
5. **Term.** Either party may terminate this Agreement at any time. Zilog reserves the right to disconnect User from the Network at any time, without warning of any kind. In addition, this Agreement shall automatically terminate if any related

consulting agreement between User and Zilog expires or is terminated. Upon termination, User shall immediately cease accessing and using the Network and shall immediately return the equipment to Zilog.

6. **Nondisclosure and Ownership.**

Through its use of the Network, User may have access to certain information that is confidential and proprietary to Zilog including, but not limited to, software, technical or other documentation, financial data, and marketing and customer data (the "Confidential Information").

User agrees not to make Confidential Information available in any form to any third party or to use Confidential Information for any purpose other than for Zilog business purposes. User shall use the same care and discretion to avoid disclosure, publication or dissemination of Confidential Information as it uses with its own similar information, but in no event less than a reasonable degree of care. User is responsible for ensuring that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure, or (d) is independently developed by the other party.



User agrees that a breach of the confidentiality provisions of this Agreement may breach the security of Zilog's Network and data devices attached thereto and therefore would cause irreparable harm to Zilog for which no adequate remedy at law exists, and User therefore agrees that, in addition to any other remedies available, Zilog shall be entitled to injunctive relief to enforce the terms of this Agreement.

User acknowledges and agrees that Zilog is the owner of the Network and all data contained therein. Nothing in this Agreement shall be construed to transfer any of Zilog's proprietary rights to User. User agrees that Zilog may offer use and access to the Network to other parties.

User shall have no expectation of privacy when using or accessing the Network. Zilog reserves the right to access, review, copy or delete User's messages and files for any purpose and to disclose them to any party it deems appropriate.

7. **Warranty Disclaimer/Limitation of Liability. USER ACCEPTS ACCESS TO THE NETWORK ON AN "AS IS" BASIS. ZILOG MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO PERFORMANCE, DATA QUALITY, ACCESSIBILITY OR INTEGRITY OF THE NETWORK, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. ZILOG ASSUMES NO RESPONSIBILITY IN CONNECTION WITH USER'S ACCESS TO OR USE OF THE NETWORK.**

**ZILOG SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING OUT OF USER'S ACCESS TO OR USE OF THE NETWORK.**

8. **Liability/Indemnification. USER SHALL BE LIABLE FOR, AND SHALL INDEMNIFY AND HOLD ZILOG HARMLESS FROM, ANY DAMAGES SUSTAINED BY ZILOG, INCLUDING, BUT NOT LIMITED TO, LOSSES, LIABILITIES, CLAIMS, DEMANDS, SUITS, CAUSES OF ACTION, JUDGMENTS, COSTS OR EXPENSES (INCLUDING COURT COSTS AND ATTORNEYS' FEES) ARISING OUT OF USER'S ACCESS TO OR USE OF THE NETWORK.**

9. **Assignment.** The rights granted in this Agreement may not be assigned by User, the obligations in this Agreement may not be delegated, and this Agreement may not be transferred, without the prior written approval of Zilog. Any such unauthorized assignment, delegation, or transfer shall be void.

10. **Governing Law, Jurisdiction.** This Agreement is made and entered into by the parties in the State of California and shall be construed according to the laws of that state. Any legal action or proceeding relating to this Agreement shall be instituted in any state or federal court in Santa Clara County, California. User and Zilog agree to submit to the jurisdiction of, and agree that venue is proper in, the aforesaid courts in any such legal action or proceeding.

11. **Export Administration.** User agrees to comply fully with all relevant export or import laws and regulations of the United States and any other applicable



jurisdiction ("Export Laws") and agrees that no information or equipment is exported or imported, directly or indirectly, in violation of Export Laws.

12. **Severability and Entire Agreement.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

This Agreement sets forth the entire agreement between the parties concerning its subject matter and supersedes all prior or contemporaneous agreements, whether written or oral. All additions or modifications to this Agreement must be made in writing and must be signed by both parties.

Zilog Incorporated

Authorized by: *M. J. Glynn*

Name: ~~Akio Kawai~~ Mike Glynn

Title: Director of Global Human Resources

IT.

USER

By: *David A. Roberts* 2/15/2011

Name: David A. Roberts

Title: Business Management Member



Neville  
Janet  
5/23/12  
CP

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_  
**ORIGINAL**  
MAY 22 2012  
CHRISTOPHER D. RICH, Clerk  
By JERI HEATON  
DEPUTY

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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I – X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,

Counterclaimants,

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Case No. CV OC 1123344

REPLY IN SUPPORT OF MOTION  
TO COMPEL

sk

Counterdefendant.

COMES NOW, Plaintiff American Semiconductor, by and through its attorneys of record, Anderson Julian & Hull, and hereby submits this reply in support of American Semiconductor's Motion to Compel.

I.

**LEGAL DISCUSSION**

Since prior to the filing of the Complaint in this matter, Defendants Sage, Roberts, Tiffany, and Yearsley have refused to produce unredacted or unencrypted copies of e-mails and other various documents related to services Sage provided to Zilog. The documents requested are for a period when Roberts, Tiffany and Yearsley were also employed by American Semiconductor. Despite numerous conversations with Sage's counsel, no agreement was reached regarding the terms of a protective order for these documents. Sage, Roberts, Tiffany, Yearsley and Zilog now apparently seek to prevent disclosure of these unredacted and unencrypted documents in total. In response to the Motion to Compel, ASI only received two documents: the Affidavit of David Roberts, and the Affidavit of Steve Darrough. ASI will respond to these two documents.

Under the Idaho Rules of Civil Procedure, a party is allowed to seek any information which "appears reasonably calculated to lead to the discovery of admissible evidence." *I.R.C.P.* 26(b)(1). Plaintiff ASI should be allowed to seek evidence related to the claims alleged in the Complaint. Among other things, ASI

has alleged breach of the duty of loyalty and breaches of specific contracts, including employment contracts, non-disclosure agreements, assignment agreements and other various agreements which Roberts, Yearsley and Tiffany entered into as part of their employment or contract work with ASI. *See Amended Complaint*, ¶¶ 55 – 74. By forming Sage and engaging in work for another company (Zilog), Roberts, Yearsley and Tiffany violated the duty of loyalty and various contractual terms, and the information sought is relevant to establish the extent of such violation, as well as the possible damages flowing from such violation.

With regard to the alleged breach of the duty of loyalty, ASI contends that Roberts, Yearsley, and Tiffany acted in a manner in competition with ASI. This is not allowed under Idaho law.

Throughout the duration of an agency relationship, an agent has a duty to refrain from competing with the principal and from taking action on behalf of or otherwise assisting the principal's competitors. During that time, an agent may take action, not otherwise wrongful, to prepare for competition following termination of the agency relationship.

Wesco Autobody Supply, Inc. v. Ernest, 149 Idaho 881, 892, 243 P.3d 1069, 1080 (2010), reh'g denied (Nov. 26, 2010). When employees put themselves "in such a position that their interests became antagonistic to those of their principal or that they may have been assisting the principal's competitors," they are violating the duty of loyalty owed to their employer. *Id.* at 893. By forming Sage and contracting with Zilog, Roberts, Tiffany, and Yearsley were acting in a manner that clearly conflicted with their employment with ASI. Sage was organized January 28,

2010. *Amended Complaint*, ¶¶ 19 – 20; *Defendants' Verified Answer*, ¶¶ 3, 10 (admitting ¶¶ 19 and 20 of the *Amended Complaint*). The services contract with Zilog was signed February 15, 2011. *Roberts Aff.*, Ex. A (p. 6 of 22). Roberts, Tiffany, and Yearsley were employed by ASI by at least January 19, 2010, and were still employed in February, 2011. *See Defendants' Verified Answer*, ¶ 7. It does not appear that there was any intent for Roberts, Tiffany, or Yearsley to stop moonlighting as Sage, as they continued working for Zilog up until the day ASI discovered what they were doing, and they were terminated. The information sought is essential to know the extent of the work done by Sage for Zilog, so that ASI can assess its damages.

Similarly, Roberts, Yearsley and Tiffany violated their employment agreements. Under the Employment Confidentiality Agreement signed by Roberts, Yearsley, and Tiffany, they agreed that

**3. Disclosure of Inventions.** Employee will promptly disclose to Employer all inventions, improvements, designs, original works of authorship, formulas, processes, software programs, databases, mask works, and trade secrets (the "Inventions") that he/she has made or conceived or created, either alone or jointly with others, during the term of his/her employment, whether or not in the course of employment and whether or not such Inventions are patentable, copyrightable or protectable as trade secrets.

*Amended Complaint*, ¶ 18. *See also Defendants' Verified Answer* (dated January 13, 2012), ¶ 3 (admitting the allegations of ¶ 18 of the *Amended Complaint*). Inventions, under this definition, includes "design" work. All such inventions were assigned to ASI pursuant to the Employee Confidentiality Agreement:

4. **Assignments of Inventions.** Employee agrees that all Inventions that (i) are developed using equipment, supplies, facilities, or trade secrets of Employer; (2) [sic] result from work performed by Employee for Employer; or (iii) relate to Employer's business or current or anticipated research and development, will be the sole and exclusive property of Employer, and Employee hereby irrevocably assigns all rights in such Inventions to Employer.

*Amended Complaint*, ¶ 18. Pursuant to the Zilog Independent Contractor Services Agreement, the work done by Sage for Zilog included "design and logic/circuit simulation." *Roberts Aff.*, Ex. A (p. 8 of 22). The design work done by Sage for Zilog was by definition of the type that ASI could have provided to Zilog (and therefore related to ASI's business), because the people who provided the design work to Zilog (Roberts, Tiffany, and Yearsley) were also employed by ASI. There is little doubt that the work done by Roberts, Tiffany, and Yearsley for Zilog on behalf of Sage could have been done on behalf of ASI. Therefore, all work done by Roberts, Tiffany, Yearsley or any other ASI employee for Zilog is or should be assigned to ASI and is ASI's property. It makes little sense for Zilog and Mr. Roberts to argue that ASI should not have access to the information sought, particularly where ASI has a claim to ownership of the information.

Contrary to the implications of Mr. Roberts' and Mr. Darrough's affidavits, ASI is not seeking information with the intent to steal or appropriate trade secrets. ASI is seeking information regarding services provided to Zilog that should have been provided by ASI, and which pursuant to the Employee Confidentiality Agreement, arguably belongs to ASI anyway. At a minimum, on or around October 21, 2011, Sage and other defendants produced approximately 232 pages of

documents, almost all of which contain redactions.<sup>1</sup> In response to discovery requests, toward the end of January, 2012, Sage and other defendants produced many thousands of documents, some of which contain redactions.<sup>2</sup> In addition, Sage and the other Defendants have produced e-mails in encrypted format, and have failed to produce design files which have been sought. Mr. Roberts states that he does not believe that the design files were sought as part of this Motion to Compel. That is incorrect: ASI seeks all of the design files utilized by Roberts, Tiffany, Yearsley, and/or Sage in the work they performed for Zilog. However, with the exception of the design files (which Mr. Roberts now testifies under oath that he does not have copies of and cannot access, *Roberts Aff.* ¶ 11), it is clear that these documents are all in Defendants' possession.

Defendants claim to have redacted "Information regarding the new peripherals, features, functions and how they were integrated", as well as "the identity of design engineers working on the Zilog product who were not members of Sage Silicon Solutions, LLC." *Roberts Aff.*, ¶¶ 7 – 8. All such information is discoverable, as it is essential to know what "inventions" the Defendants worked on but failed to assign to ASI. Further, persons who also worked on the "inventions", whether employed by Sage or Zilog, are also discoverable, as they may have additional information as to what work was done, or may have knowledge as to what Zilog knew about Sage when it contracted with Sage. *See,*

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<sup>1</sup> These documents were produced without bates stamps. ASI has bates stamped these documents SAGE 1 – 232.

<sup>2</sup> These documents again were produced without bates stamps. ASI has bates numbered these documents SAGE 233 – 3226. The portions with redactions are contained within the range SAGE 239 – 499.



e.g. Wiseman v. Schaffer, 115 Idaho 537, 539, 768 P.2d 800, 802 (Ct. App. 1989) (the identity and location of witnesses is discoverable pursuant to *I.R.C.P.* 26(b)(1)).

Frankly, Zilog's recourse under the circumstances of this case is not to prevent ASI from obtaining information or documentation related to ASI's design property, but instead is to pursue claims against Sage for violations of the Zilog Independent Contractor Services Agreement. *Roberts Aff.*, Ex. A. Pursuant to that agreement, Sage assigned rights to Zilog and made warranties in contravention of the ASI Employee Confidentiality Agreements. *Roberts Aff.*, Exhibit A (pp. 3 of 22 through 4 of 22, 11 of 22, 13 of 22, 14 of 22). Zilog can pursue claims against Sage for breaching the various warranties.

Further, if Zilog knew that Sage employees were also ASI employees at the time Sage entered into the Zilog Independent Contractor Services Agreement, and Zilog still used Sage to do contractor services, Zilog could arguably be considered as having tortiously interfered with ASI's prospective economic advantage by essentially stealing away ASI's employees, or tortiously interfered with ASI's employment contracts, and thereby improperly using ASI's "inventions" and its trade secrets without a license in violation of federal and state law. There is evidence to support these assertions. At the time Zilog and Sage entered into the "Zilog Independent Contractor Services Agreement" on February 15, 2011, Zilog had the opportunity and duty to ensure that no violation of the employment relationship was occurring. The Zilog Services Agreement specifically states:

**18. Background investigations:** Contractor [Sage], and all its employees, agents and contractors shall be subject to a security background investigation at Zilog's sole option and expense and contractor hereby consents to the same. Such background investigation may include, without limitation, the following information: verification of social security and motor vehicle department information, verification of previous employment and references, verification of current and former addresses, criminal conviction, history (previous five years) and litigation history (previous five years).

*Roberts Aff.*, Exhibit A (p. 5 of 22). If Zilog had done such an investigation, Zilog would have been aware that various Sage employees were currently employed by ASI. If Zilog was aware that the Sage employees were employed by ASI, Zilog could conceivably be responsible for interfering with the employment contracts. Without access to the requested documents, ASI is hamstrung in its ability to pursue these claims.

This is not merely a fishing expedition. As previously discussed in the Stipulation to Extend the Service Deadline, ASI additionally needs these documents to determine whether or not Zilog may be culpable for violating the various contracts between ASI and the employees. Both Zilog and the Defendants appear to argue that disclosure of the redacted and otherwise non-produced information would somehow impair Zilog's ability to compete or otherwise harm Zilog's business interests. *See Roberts Aff.*, ¶ 10; *Darrough Aff.*, ¶¶ 5 – 6. However, this is not a basis for denying a Motion to Compel. Indeed, ASI attempted numerous times to find language which would alleviate these concerns in a protective order

under I.R.C.P. 26(c).<sup>3</sup> Despite these attempts, the Defendants refuse to produce the unredacted information unless ASI and its employees and/or its agents were barred from seeing such information. As ASI has a claim to ownership of the information, this concern is groundless. Even if there is a concern, ASI is agreeable to a protective order limiting disclosure of such information to a limited group, including ASI principals Doug Hackler, Rich Chaney and Dale Wilson (all of whom have been identified as potential experts in ASI's discovery responses), as well as any retained experts (who would be bound by the protective order).

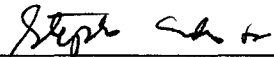
## II.

### CONCLUSION

Based on the foregoing, neither Zilog nor Mr. Roberts has provided the Court with an adequate reason why the Court should not compel the Defendants to disclose the requested information. ASI seeks the unredacted and unencrypted versions of the documents previously produced, and to the extent that Sage, Roberts, Tiffany, or Yearsley have access or possession of such information, the design files on which they worked.

DATED this 22 day of May, 2012.

ANDERSON, JULIAN & HULL LLP

By   
Brian K. Julian, Of the Firm  
Attorneys for Plaintiff

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<sup>3</sup> Such concerns are directly addressed by I.R.C.P. 26(c)(7) which addresses "trade secrets or other confidential research, development or commercial information."

CERTIFICATE OF MAILING

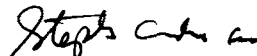
I HEREBY CERTIFY that on this 22 day of May, 2012, I served a true and correct copy of the foregoing REPLY IN SUPPORT OF MOTION TO COMPEL by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Russell G. Metcalf	<input type="checkbox"/>	U.S. Mail, postage prepaid
YOST & METCALF	<input type="checkbox"/>	Hand-Delivered
4 Ogden Avenue	<input type="checkbox"/>	Overnight Mail
P.O. Box 1275	<input checked="" type="checkbox"/>	Facsimile
Nampa, Idaho 83653		
Telephone: (208) 466-9222		
Facsimile: (208) 466-1981		

*Attorneys for Defendants*

Gary L. Cooper	<input type="checkbox"/>	U.S. Mail, postage prepaid
COOPER & LARSEN CHARTERED	<input type="checkbox"/>	Hand-Delivered
151 North Third Avenue, 2 <sup>nd</sup> Floor	<input type="checkbox"/>	Overnight Mail
P.O. Box 4229	<input checked="" type="checkbox"/>	Facsimile
Pocatello, Idaho 83205-4229		
Telephone: (208) 235-1145		
Facsimile: (208) 235-1182		

*Attorneys for Defendants*



Brian K. Julian

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MAY 31 2012  
IDAHO COUNTY

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Attorneys for Plaintiff

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. *4:25*

JUN 12 2012

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I – X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,

Counterclaimants,

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

ORDER RE MOTION TO COMPEL

This matter having come before the Court on hearing on May 25, 2012, and good cause appearing therefor,

IT IS ORDERED AND THIS DOES HEREBY ORDER that Plaintiff American Semiconductor, Inc.'s Motion to Compel <sup>is</sup> ~~will be~~ granted subject to ~~the imposition~~ *Jm*  
~~a~~ a Protective Order. The parties shall work to provide a Stipulated Protective *Jm*  
Order to the Court no later than June 25, 2012. If the parties cannot agree to a  
Stipulated Protective Order by June 25, 2012, either or both parties may submit a  
proposed Protective Order to the Court, and the Court will impose a Protective  
Order with regard to the production of the documents at issue. ~~An award related~~  
~~to attorney fees for this Motion to Compel may be reserved until the conclusion of~~ *Jm*  
~~this case, and filed or awarded at that time.~~

DATED this 12<sup>th</sup> day of <sup>June</sup> ~~May~~, 2012.

*J. Meville*  
District Judge

RECEIVED

JUN 27 2012

Ada County Clerk

Gary L. Cooper - Idaho State Bar #1814  
COOPER & LARSEN, CHARTERED  
151 North Third Avenue, Second Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
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*Counsel for Counterclaimants*

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 330

JUN 27 2012

CHRISTOPHER D. RICH, Clerk  
By DEBBIE DERE  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )

Plaintiff, )

vs. )

SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, RUSSELL LLOYD, )  
WILLIAM TIFFANY, EVELYN PERRYMAN, )  
and Defendants DOES I - X, )

Defendants. )

CASE NO. CV-OC-1123344

**DEFENDANTS' MOTION FOR  
PROTECTIVE ORDER**

SAGE SILICON SOLUTIONS, LLC, an	)
Idaho limited liability company; DAVID	)
ROBERTS, GYLE YEARSLEY, RUSSELL	)
LLOYD, WILLIAM TIFFANY, EVELYN	)
PERRYMAN, individuals,	)
	)
Counterclaimants,	)
	)
vs.	)
	)
AMERICAN SEMICONDUCTOR, INC.,	)
an Idaho Corporation,	)
	)
Counterdefendant.	)
_____	)

COME NOW Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany and pursuant to IRCP 26(c) and move this Court for a Protective Order providing for limitations and protections set forth in the attached proposed Stipulated Protective Order Re: Discovery.

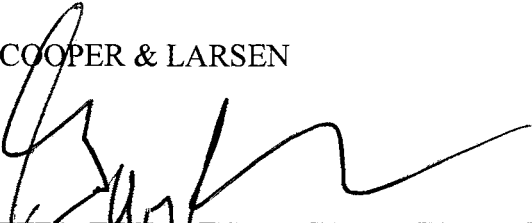
This motion is made on the grounds and for the reasons that the material requested is proprietary which includes confidential and trade secret information of Zilog which is protected by disclosure under a confidential agreement the Defendants signed with Zilog.

This motion is being filed at this time to protect Defendants' right to seek a protective order pursuant to the Order entered by this Court on June 12, 2012. The undersigned continues to negotiate with counsel for Plaintiffs for a Stipulated Protective Order and has not therefore noticed this motion for hearing and will not until it becomes certain that the parties cannot agree to a Stipulated Protective Order.



DATED this 25<sup>th</sup> day of June, 2012.

COOPER & LARSEN

  
\_\_\_\_\_  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

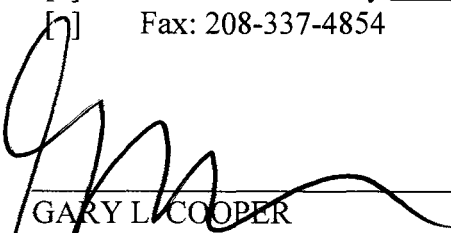
I hereby certify that on the 25<sup>th</sup> day of June, 2012, I served a true and correct copy of the foregoing to:

Brian K. Julian  
Stephen L. Adams  
ANDERSON, JULIAN & HULL  
C. W. Moore Plaza  
250 South Fifth Street, Suite 700  
P.O. Box 7426  
Boise, Idaho 83707-7426

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☐ Express mail  
☐ Hand delivery  
☐ Electronic delivery [bjulian@ajhlaw.com](mailto:bjulian@ajhlaw.com)  
[sadams@ajhlaw.com](mailto:sadams@ajhlaw.com)  
☐ Fax: 208-344-5510

Russell G. Metcalf  
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\_\_\_\_\_  
GARY L. COOPER

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*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
Gyle Yearsley and William Tiffany*

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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, RUSSELL LLOYD, )  
WILLIAM TIFFANY, EVELYN PERRYMAN, )  
and Defendants DOES I - X, )  
 )  
Defendants. )  
\_\_\_\_\_ )

CASE NO. CV-OC-1123344

**STIPULATED PROTECTIVE  
ORDER RE: DISCOVERY**

SAGE SILICON SOLUTIONS, LLC, an	)
Idaho limited liability company; DAVID	)
ROBERTS, GYLE YEARSLEY, RUSSELL	)
LLOYD, WILLIAM TIFFANY, EVELYN	)
PERRYMAN, individuals,	)
	)
Counterclaimants,	)
	)
vs.	)
	)
AMERICAN SEMICONDUCTOR, INC.,	)
an Idaho Corporation,	)
	)
Counterdefendant.	)
_____	)

The parties to this action stipulate and agree that discovery in this matter may involve production of confidential or trade secret information. In view of this stipulation the Court hereby finds that good cause exists for issuance of a Protective Order with respect to discovery. Therefore, pursuant to Idaho R. Civ. P. 26(c),

IT IS HEREBY ORDERED AS FOLLOWS:

1. Definitions. The following definitions shall apply to this Order:

(a) Designation of Material as "Confidential": If a party believes in good faith that documents in any format, materials or information ("Material") supplied by it, the other party or a third party constitutes commercially sensitive or proprietary information, the party may designate such information as Confidential, and it shall be entitled to protection pursuant to Idaho R. Civ. P. 26(c). "Confidential Information" must be commercially sensitive or proprietary information, but shall not include information that was publicly available or in the public domain at the time it was communicated or disclosed by the party producing the information to the qualified person. "Publicly available" information includes, but is not limited to, information that was

disclosed pursuant to law, or in response to the order of a court of government authority. Publicly available information does not include information disclosed by a party or to a third-party under a reasonable expectation of confidentiality.

(b) Designation of Material as "Attorneys' Eyes Only": If a party or counsel believes in good faith that Materials supplied by it, or a third party constitute trade secrets, confidential research, manufacturing development, or other commercially sensitive or proprietary information, the disclosure of which to a party or a third party would injure a party or a third party, the party or counsel may designate such information as "ATTORNEYS' EYES ONLY" and the information so designated shall thereafter be subject to the "Attorneys' Eyes Only" provisions of this Stipulated Protective Order.

(c) The parties shall in good faith consult regarding the appropriateness of the "Confidential" and/or "Attorneys' Eyes Only" designation. If they are unable to agree, the issue shall be submitted to the Court for resolution as set forth herein.

(d) "Qualified Persons" shall mean and refer to:

- (i) attorneys who are counsel of record and are representing or have represented any of the parties to this lawsuit in connection with the matters raised in the lawsuit and persons in the regular secretarial, clerical, stenographic or paralegal employ of the law firm that are counsel of record in this law.
- (ii) representatives of the parties to this action who are responsible for or involved in the conduct of this litigation, except that Confidential Information disclosed to such persons shall be limited to that which reasonably relates to their responsibility for or conduct of the litigation;
- (iii) court personnel, including stenographic reporters engaged in such proceedings, incident to counsel's preparation for trial and/or trial of this action;

- (iv) expert witnesses or prospective expert witnesses retained or consulted by counsel for purposes of this case, except that the Confidential Information disclosed to such persons shall be limited to that reasonably necessary for them to form an opinion or prepare their testimony as to the matters about which counsel consulted or retained them;
- (v) consultants and/or experts retained or consulted by counsel, who assist counsel in the prosecution in this action, except that Confidential Information disclosed to such persons shall be limited to that which reasonably relates to the issues or subject on which they advise counsel;
- (vi) fact witnesses (including their counsel), called at trial or hearing or used in the investigation of all claims and defenses, except that the Confidential Information disclosed to such persons shall be limited to that which is reasonably necessary for their testimony or its preparation; and
- (vii) such other persons as may hereafter be qualified to receive Confidential Information pursuant to order of this Court or written agreement of the parties.

2. Limits on Use of Information. Confidential or Attorneys' Eyes Only information shall only be disclosed to the persons and under the circumstances described herein. The parties shall not use or rely on any Confidential or Attorneys' Eyes Only information learned as a result of this litigation, except as reasonably required by the litigation. If any party breaches this Paragraph 2, any other party may seek injunctive, compensatory and/or other relief allowed by law or equity. Persons who execute an acknowledgement form pursuant to Paragraphs 3 and 4 below, shall be considered "parties" for the purposes of this Paragraph 2.

3. Confidential Information. The substance or content of the Confidential Information shall not be disclosed to anyone other than a Qualified Person. No Confidential Information disclosed pursuant to the terms of this Order shall be disclosed or used by a recipient for any purpose other than reasonably necessary for the conduct of this litigation.

4. Attorneys' Eyes Only Information. The substance or content of Attorneys' Eyes Only information shall not be disclosed to anyone other than outside attorneys who are counsel of record and are actively representing any of the parties to this lawsuit in connection with the matters raised in the lawsuit and outside non-attorney experts and outside non-attorney consulting experts retained by that party. "Outside" is intended to limit and does limit and prohibit disclosure of Attorneys' Eyes Only information to employees of American Semiconductor, Inc.. Prior to the disclosure of Attorneys' Eyes Only information to any expert or consultant, that person must execute an acknowledgement, acknowledging that he or she had read and will be bound by the terms of this Order. Attorneys' Eyes Only information is to be used solely for the purpose of this case.

5. Identifying Information Subject to Protective Order. Any Material, including but not limited to any deposition transcript page or portion thereof, shall be identified as Confidential Information or Attorneys' Eyes Only information and, where appropriate, marked prominently by the disclosing party with the following legend: "**Confidential**" or in the case of Attorneys' Eyes Only information "**Confidential - Attorneys Eyes Only.**" Counsel for the disclosing party shall advise counsel for the other party of the Material to fall within the terms of this Order within thirty (30) days of receiving the Material. All parties shall treat any Material disclosed in this matter as confidential during the thirty-day period for confidentiality designation. Unless the disclosing party substantially complies with this paragraph, its claim of confidentiality will be waived, provided that if a disclosing party inadvertently failed to appropriately designate Material as containing or constituting Confidential or Attorneys' Eyes Only information without the aforesaid legend, it shall have thirty days after disclosure to request the other party to so mark the document, at which time the document shall be treated as a Confidential or Attorneys' Eyes Only document pursuant to the

terms of the Order. The parties shall designate deposition transcripts on a line-by-line basis. All other documents shall be designated on a page-by-page basis. If a party believes that a more detailed designation of a document is necessary (e.g., sentence-by-sentence), it may so designate, or it may request that another party re-designate that document, as applicable.

6. Challenges to Designations of Protective Order Coverage. Any party may, at any time, give notice to a producing party that the party challenges the other party's request for confidentiality. If the parties cannot resolve their dispute amicably, then the requesting party may file a motion at that time seeking an Order of the Court with respect to the Material in question. The proponent of the request for confidentiality shall bear the burden of demonstrating that confidential treatment is appropriate. The requesting party shall continue to hold the Material as Confidential or in Attorneys' Eyes Only status until the Court rules on the Material in question.

7. Filing Covered Information with Court. All Materials filed with the Court, which are designated by the other party as comprising or containing Confidential or Attorneys' Eyes Only information, and any pleading or memorandum purporting to produce or paraphrase Confidential or Attorneys' Eyes Only information, shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the title of this action, an indication of the nature of the contents of such sealed envelope or other container, and the word "CONFIDENTIAL" and a statement substantially in the following form:

This envelope contains documents which are filed in this case by (name of party) and is not to be opened or the contents thereof to be displayed or revealed except by order of the Court; provided, however, that counsel of record for any of the parties in this case and paralegals employed by said counsel may open this envelope in the office of the Clerk of this Court and there inspect the contents hereof at any time, and from time to time, without order of the Court, and upon completion of such inspection by counsel, the envelope containing such documents shall be resealed by the Clerk of this Court.

Any Materials submitted to the Court, or any appellate court, as provided herein shall thereby become part of the record and subject to the provisions of this Protective Order. Should the Court determine during the duration of this matter or at its conclusion that, under applicable law, the public may have an interest in viewing sealed Materials, the Court will hold a hearing to determine which Materials, if any, should be unsealed.

8. Continuing Jurisdiction. Jurisdiction of this action is to be retained by this Court after final determination for purposes of enabling any party or person affected by this Order to apply to the Court for such direction, order or further decree as may be appropriate for the construction; modification, enforcement or compliance herewith or for the punishment of any violation hereof, or for such additional relief as may become necessary to realize the intentions of this Order.

9. Restrictions on Use of Confidential Information in Depositions. Persons may be deposed regarding Confidential information. Only Qualified Persons as defined in this Order may be present during such depositions. A reporter recording any Confidential information or incorporating into a transcript any Material containing Confidential information or incorporating into a transcript any documents containing Confidential information shall transit such transcript only to counsel of record for the parties. Any such transcript shall not be filed with the Clerk of this Court, except under Seal.

10. Restrictions on Use of Attorneys' Eyes Only Information in Depositions. Persons employed or retained by a party may be deposed regarding Attorneys' Eyes Only information produced by that party. Only counsel of record for the deposing party may be present during the portion of such depositions in which Attorneys' Eyes Only information is discussed or referred to. A reporter recording any Attorneys' Eyes Only information or incorporating into a transcript any



documents containing Attorneys' Eyes Only information shall transmit such transcript only to counsel of record for the parties. Any such transcript shall not be filed with the Clerk of this Court, except under Seal.

11. Further Orders of Court. Maintenance of the confidential status of any Material shall in all cases be subject to further Order of the Court and nothing herein shall preclude any party from applying to the Court for any appropriate modification of this Order; provided, however, that prior to such application, the parties shall certify in writing that they have endeavored unsuccessfully to resolve the matter.

12. Coverage of Pretrial Proceedings. This Order shall govern pretrial proceedings. The handling of Confidential or Attorneys' Eyes Only information at trial may be governed by a later Order of the Court.

13. Return of Information Upon Termination. Upon termination of this action, the Clerk shall return all documents containing Confidential or Attorneys' Eyes Only information in the Court file to counsel for the party who filed such Confidential or Attorneys' Eye Only information. Further, upon termination of this action, all documents containing Confidential or Attorneys' Eyes Only information and any copies thereof in the possession of any other person shall be returned within 30 days to counsel for the party who provided such Confidential or Attorneys' Eyes Only information.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

BY THE COURT:

\_\_\_\_\_  
THOMAS F. NEVILLE  
District Judge

ORIGINAL

Brian K. Julian, ISB 2360  
Chris H. Hansen, ISB 3076  
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[chhansen@ajhlaw.com](mailto:chhansen@ajhlaw.com)

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_ 134

JUN 27 2012

CHRISTOPHER D. RICH, Clerk  
By CHRISTINE SWEET  
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
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AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
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ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,

Counterclaimants,

Case No. CV OC 1123344

OBJECTION TO DEFENDANTS'  
MOTION FOR PROTECTIVE ORDER  
AND SUBMISSION OF  
PLAINTIFF'S PROPOSED  
PROTECTIVE ORDER

OBJECTION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER AND  
SUBMISSION OF PLAINTIFF'S PROPOSED PROTECTIVE ORDER - 1

000275

AB

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

COMES NOW, Plaintiff American Semiconductor, Inc., by and through its counsel of record, and hereby submits this Objection to the Defendants' Motion for Protective Order. The Plaintiff's objection is based primarily on the provision contained within the proposed Protective Order that certain materials would be "for attorney's eyes only." It is the Plaintiff's position and that of Plaintiff's counsel that such a provision is inappropriate and contrary to the Idaho Rules of Professional Conduct and may create a situation whereby strategic decisions pertaining to the litigation must be made by the client without seeing or reviewing pertinent information. (This Objection is also based upon the Plaintiff's Motion to Compel and supporting documents filed on or about March 26, 2012. The contents of those pleadings are incorporated by reference herein).

Additionally, if the produced documents may not be shared or discussed with the client, it poses a significant ethical problem. Specifically, Rule 1.4 of the Idaho Rules of Professional Conduct provides:

Rule 1.4: Communication

(a) A lawyer shall:

- (1) Promptly inform the client of any decision or circumstances with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

- (2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) Keep the client reasonably informed about the status of the matter;
  - (4) Promptly comply with reasonable requests for information; including a request for an accounting as required by Rule 1.5(f); and
  - (5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the expects assistance not permitted by the Rules of Professional Conduct or other law,
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

In this case, the Plaintiff submits that the documents and information which the Defendants are attempting to assert are "for attorney's eyes only," is, in some cases, information which was generated or created during the time that the Defendants were employed by the Plaintiff. The Plaintiff is clearly entitled to review and inspect those documents and that information pursuant to Rule 26 of the Idaho Rules of Civil Procedure.

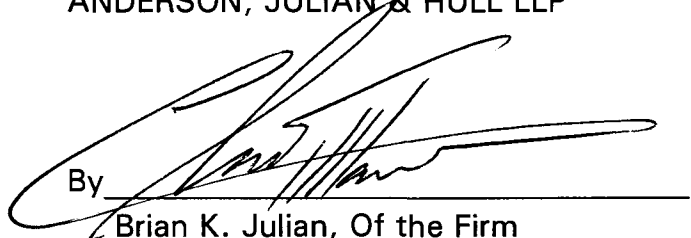
In an effort to resolve this situation, the Plaintiff had proposed and hereby submits its own Protective Order. The Plaintiff's proposed Protective Order limits the dissemination of the "confidential material" to four individuals per party and requires each individual to execute an Acknowledgement of the Protective Order in a manner similar to that of an expert witness. A copy of the Plaintiff's proposed Protective Order is attached hereto as Exhibit "A" The Plaintiff submits that its

proposed Protective Order is appropriate, properly addresses the Defendants' concerns and allows the Plaintiff and its counsel to review, analyze, discuss and evaluate the information produced for litigation purposes.

Based upon the forgoing, the Plaintiff requests the Court to deny the Defendant's Motion for Protective Order and instead, issue a Protective Order which is consistent with the Plaintiff's Proposed Protective Order.

DATED this 27<sup>th</sup> day of June, 2012.

ANDERSON, JULIAN & HULL LLP

By  \_\_\_\_\_

Brian K. Julian, Of the Firm  
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this <sup>fn</sup>27 day of June, 2012, I served a true and correct copy of the foregoing OBJECTION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER AND SUBMISSION OF PLAINTIFF'S PROPOSED PROTECTIVE ORDER by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Russell G. Metcalf  
P.O. Box 385  
Homedale, Idaho 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854

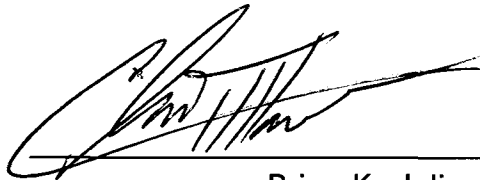
*Attorneys for Defendants*

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☐ Hand-Delivered  
☐ Overnight Mail  
☒ Facsimile

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Facsimile: (208) 235-1182

*Attorneys for Defendants*

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☐ Hand-Delivered  
☐ Overnight Mail  
☒ Facsimile



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E-Mail: [bjulian@ajhlaw.com](mailto:bjulian@ajhlaw.com)  
[chhansen@ajhlaw.com](mailto:chhansen@ajhlaw.com)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
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Plaintiff,

vs.

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and Defendants DOES I – X,

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SAGE SILICON SOLUTIONS, LLC, an  
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ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,

vs.

Case No. CV OC 1123344

PROTECTIVE ORDER



Counterclaimants,

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Pursuant to the parties' Stipulation and Idaho Rule of Civil Procedure 26(c) it is hereby ORDERED:

1. This Protective Order shall govern the designation, disclosure, dissemination and use of Confidential Material provided by Sage to meet their disclosure obligations in this action.

2. In this Protective Order, the term "Confidential Material" shall mean information and records currently redacted, encrypted or included under an agreement with Zilog designated by Sage pursuant to this Protective Order. Information and records as designated may be all or part of a discovery request, document or other record, testimony, or other form of discovery or evidence.

3. Sage may designate as Confidential Material any information or record Sage believes in good faith constitutes or embodies information of a personal commercial, or proprietary nature that is not generally known and which the designating party would not normally reveal to third parties or would cause third parties to maintain in confidence. Specifically, based on issues which have arisen and the nature of this action, the parties believe certain commercially sensitive or proprietary information such as programming concepts, design, processes, test results, engineering reports, deposit slips, ATM records, bank statements, accounting records, e-mails, tax records, other financial records, other business



records, etc., may be necessary or desirable for disclosure or use in this action and should be held in strict confidence and used solely and/or exclusively in this action. Idaho Rule of Civil Procedure 26(c) specifically provides that commercially sensitive information or other proprietary information which may cause annoyance, embarrassment, oppression, or undue burden or expense may be precluded from disclosure or disclosed only in a designated manner.

4. Confidential Material shall be designated by the following procedure.

- (a) When a document to be produced or made available for inspection contains Confidential Material, the producing party or any party to this action shall notify the receiving or inspecting party of such fact. A document produced or made available for inspection for which such notice has been given shall be subject to this Protective Order and shall be received or inspected only by the authorized or designated person or persons authorized in accordance with Paragraph 6 of this Protective Order.
- (b) When a requesting party seeks a copy of a document containing Confidential Material, the producing or receiving party, as appropriate, shall designate the copy as containing Confidential Material by stamping the first page of the copy with an appropriate notation or otherwise designating the document as Confidential Material.
- (c) When the deposition testimony or records produced by deposition or subpoena contain Confidential Material, any party may designate such

testimony, documents or records as containing Confidential Material by notifying others present at the deposition and/or other parties to this action of such fact. To the extent Confidential Material is subject to questioning, discussion, or otherwise produced or used during a deposition or by subpoena, the prior notification and designation of such information as Confidential Material is sufficient notification and designation of any related deposition testimony as Confidential Material, and the failure to specifically provide notice to otherwise designate such testimony as Confidential Material during the deposition will have no effect on the protected nature of such information.

- (d) When a response to an interrogatory or request for admission contains Confidential Material, the response shall be designated as such by stamping the first page of the document or otherwise designating the information as Confidential Material.

5. Any Confidential Material or any document or thing incorporating Confidential Material that is filed or lodged with the Court shall be so marked on the first page, sealed, and delivered to the Clerk of the Court, and shall not be available for public inspection. The envelope used to seal such information or document shall carry an appropriate notation indicating its status as Confidential Material subject to this Protective Order. The Clerk shall maintain such information or document under seal, except that any judge or magistrate exercising responsibility in this action, and his or her legal, administrative, secretarial or

clerical staffs, shall have access to documents under seal as necessary in adjudicating or administering this action.

6. Confidential Material may be disclosed only to:

- (a) Any party subject to the following limitation: each party is limited to allowing the information to be reviewed, examined and/or read by four (4) designated individuals. Each designated individual must read this Protective Order, agree to be bound by it and execute an Acknowledgement of Protective Order, as shown on Exhibit "A" to this Protective Order.
- (b) Any attorney representing a party in this action must read this Protective Order and agree to be bound by it and any person assisting such attorney, employed by the same law firm or organization as the attorney, and for whom access to Confidential Material is necessary to perform a duty with respect to this action. The stipulation to this Protective Order by any member of a law firm or organization shall constitute a representation that all persons in or employed by that firm or organization shall observe this Protective Order.
- (c) Any expert or consultant qualified to have access to Confidential Material as provided in Paragraph 7 of this Protective Order.
- (d) Any personnel of the Court and court reporters retained to record and transcribe testimony in this action.

(e) Personnel of photocopy firms and/or graphics firms who have read and agree to be bound by the terms of this Protective Order. Only documents requiring duplication will be provided to such individuals.

7. Any party may designate experts or consultants, who are not regular employees of such party, and who may have access to Confidential Material. An expert or consultant shall qualify for access to such information as follows:

(a) The party seeking to disclose Confidential Material shall first have said expert or consultant complete and sign an acknowledgement form, shown as Exhibit B to this Protective Order.

(b) If any expert or consultant engaged by the party seeking to disclose Confidential Material creates any report, document, or other item, whether intangible or tangible, related to this case, and such report or document contains Confidential Material, whether as content, exhibit, or otherwise, said report or document will have the same protected status as the Confidential Material contained therein. It will not be necessary for the expert's or consultant's report, document, or other item to be designated by either party as protected for such report, document, or other item to attain protected status pursuant to the parties' stipulation and this Protective Order.

(c) When a corporation or other organization is engaged as an expert or consultant by a party or its counsel of record, said corporation or organization may become qualified to review Confidential Material under

this Protective Order only upon the qualification of each natural person within such organization or corporation who has access to Confidential Material.

8. The substance or contents of any Confidential Material, as well as any notes, abstracts, copies, summaries, and memorandum relating thereto, shall not be disclosed to or accessible by anyone other than a person qualified and/or authorized to obtain Confidential Material pursuant to this Protective Order.

9. All materials produced in discovery, including, but not limited to Confidential Material, shall be used solely in preparation for mediation/arbitration/trial and/or appeal of this action, and shall not be used or disclosed at any other time or for any other purpose whatsoever unless specifically authorized by this Court.

10. It shall be the duty and responsibility of counsel of record to ensure that documents or things containing Confidential Material subject to counsel's control shall at all times be kept in a safe and secure fashion to ensure that such information is not disclosed to or made accessible to persons other than those specifically qualified and/or authorized to review Confidential Material under this Protective Order. Counsel of record shall be directly responsible to the court for fulfilling this responsibility.

11. The inadvertent or unintended disclosure by any party of Confidential Material shall not be deemed a waiver in whole or in part of a subsequent claim of protection under this Protective Order, either as to the specific information

disclosed or as to say other such information, provided that the inadvertent or unintended disclosure is promptly identified by the disclosing party upon discovery and notice of the claim of protection is given to the other party.

12. A party shall not be obliged to challenge the propriety of any designation of Confidential Material at the time of designation, and a failure to do so shall not preclude a subsequent challenge to the designation. If a party objects to any designation of such information the parties shall first try to resolve such dispute in good faith on an information basis. If the dispute cannot be resolved informally, the designating party may seek appropriate relief from the Court. Notwithstanding anything in this Protective Order to the contrary, the parties acknowledge and agree that each party is reserving the right to argue at all times, to the Court, that any Confidential Material has been improperly designated as such and should not receive protected status under this Protective Order. Additionally, any party may seek additional protection with respect to Confidential Material as that party may consider appropriate.

13. Should any party, or person qualified to obtain Confidential Material hereunder, or their agents or representatives, receive any request for information whether through formal compulsory process or lawful authority of the Court or otherwise, prior to responding thereto, such person or counsel shall promptly serve written notice of receipt of same on counsel for all parties hereto in order to allow said party or parties to move an appropriate court or tribunal for a ruling respective the necessity of compliance therewith.

14. Within thirty (30) days after the termination of this action, the originals and all copies of Confidential Material shall be destroyed or returned to the party that produced such information, or to its attorney, except that one copy of such information may be retained in the files of each attorney. Any information so retained shall be maintained pursuant to this Protective Order, and by retaining this information each attorney agrees to the continuing jurisdiction of this Court for purposes of enforcing this Protective Order.

15. Upon final termination of this action, whether by settlement, dismissal or other disposition, the provision of this Protective Order shall continue to be binding upon all persons or entities who are subject to the terms hereof, and the court shall retain jurisdiction for enforcement of this order.

16. American Semiconductor reserves the right to request and/or petition the Court for modification of this Protective Order upon a showing of good cause. Material Disclosed in this case that is determined by the Court to be the property of American Semiconductor will be immediately released for unlimited use and without restriction by American Semiconductor.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
District Judge

Neville  
Janet  
7-12-12  
R

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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 209

JUL 11 2012

CHRISTOPHER D. RICH, Clerk  
By KATHY BIEHL  
Deputy

Original

John N. Zarian, ISB# 7390  
JZarian@ParsonsBehle.com  
Peter M. Midgley, ISB# 6913  
PMidgley@ParsonsBehle.com  
PARSONS BEHLE & LATIMER  
960 Broadway Avenue, Suite 250  
Boise, Idaho 83706  
Telephone: (208) 562-4900  
Facsimile: (208) 562-4901

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
corporation; ZILOG, INC., a Delaware corporation;  
DAVID ROBERTS; GYLE YEARSLEY; RUSSELL  
LLOYD; WILLIAM TIFFANY; EVELYN  
PERRYMAN; and Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

NOTICE OF SUBSTITUTION OF  
COUNSEL

RELATED COUNTERCLAIMS

ORB

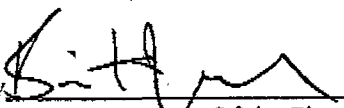


**NOTICE IS HEREBY GIVEN**, pursuant to Rule 11(b)(1) of the Idaho Rules of Civil Procedure, that the law firm of PARSONS BEHLE & LATIMER has been substituted as counsel of record in the place and stead of ANDERSON, JULIAN & HULL LLP to represent Plaintiff and Counterdefendant, AMERICAN SEMICONDUCTOR, INC., in the above-captioned action.

It is hereby requested that all pleadings, correspondence and other matters be served on said substituted counsel at 960 Broadway Avenue, Suite 250, Boise, Idaho 83706; facsimile: (208) 562-4901.


DATED this 6<sup>th</sup> day of July, 2012.

ANDERSON, JULIAN & HULL LLP

By   
Brian K. Julian - Of the Firm

DATED this 10<sup>th</sup> day of July, 2012.

PARSONS BEHLE & LATIMER

By   
John N. Zarian - Of the Firm

**CERTIFICATE OF SERVICE**

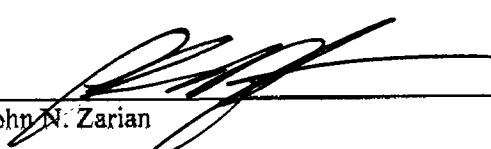
I HEREBY CERTIFY that on the 11<sup>th</sup> day of July, 2012, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2<sup>nd</sup> Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Email: gary@cooper-larsen.com  
*Attorney for Defendants*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Telecopy

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4954  
Email: rmetcalf@cableone.net  
*Attorney for Counterclaimants*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Telecopy

  
\_\_\_\_\_  
John W. Zarian

4840-7394-5104.1

Neville  
Janet  
1-22-13  
A

RECEIVED

JAN 18 2013

Ada County Clerk

NO. \_\_\_\_\_  
A.M. 11/40 FILED P.M. \_\_\_\_\_

JAN 29 2013

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )

Plaintiff, )

vs. )

SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, RUSSELL LLOYD, )  
WILLIAM TIFFANY, EVELYN PERRYMAN, )  
and Defendants DOES I - X, )

Defendants. )

CASE NO. CV-OC-1123344

PROTECTIVE ORDER

SAGE SILICON SOLUTIONS, LLC, an )  
Idaho limited liability company; DAVID )  
ROBERTS, GYLE YEARSLEY, RUSSELL )  
LLOYD, WILLIAM TIFFANY, EVELYN )  
PERRYMAN, individuals, )

Counterclaimants, )

vs. )

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )

Counterdefendant. )

Pursuant to Idaho Rule of Civil Procedure 26(c) and pursuant to the stipulation and agreement of the parties,

IT IS HEREBY ORDERED that if, in the course of this proceeding, any party (including any party named as a defendant in this action, whether or not previously served with process) or non-party has the occasion to disclose information deemed in good faith to constitute confidential information, as defined below, the following procedures shall be employed and the following restrictions shall govern the handling of documents, depositions, pleadings, exhibits and all other information exchanged by the parties or non-parties hereto.

#### **SCOPE**

1. This Protective Order shall govern the designation, disclosure, dissemination and use of Confidential Material (as defined below) provided by any parties or non-parties to meet disclosure obligations in the above-captioned proceeding (the "Action").

2. As used herein, the term "Confidential Material" shall mean information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under I.R.C.P. 26(c), including trade secrets or confidential research, development or commercial information. Confidential Material may include, without limitation, programming records, designs, processes, source code, engineering documents, financial statements, accounting records, e-mails and other confidential business records.

#### **DESIGNATION**

3. In accordance with this Protective Order, any party or non-party may designate any Confidential Material as "CONFIDENTIAL" in this Action if it believes in good faith that the material constitutes or embodies information that (a) satisfies the definition of Confidential Material

in the foregoing Paragraph 2, (b) is not generally known, and (c) which the designating party would not normally reveal to third parties or would cause third parties to maintain in confidence.

4. Any party or non-party may designate documents or other tangible things as CONFIDENTIAL in this Action by placing the following legend or a similar legend on the document or thing: CONFIDENTIAL; provided, however, that in the event original documents are produced for inspection, the producing party shall place the appropriate legend on the documents in the copying process.

5. Any party or non-party may designate discovery requests or responses (and the information contained therein) as CONFIDENTIAL in this Action by placing the following legend on the face of any such document: CONFIDENTIAL. In the case of discovery requests or responses, a statement may also be included within the document specifying the portion(s) thereof as having been designated as CONFIDENTIAL.

6. Any party or non-party may designate depositions and other testimony (including exhibits) as CONFIDENTIAL in this Action by (a) indicating on the record at the time the testimony is given that the entire testimony or portions thereof shall be designated as CONFIDENTIAL, or (ii) by captioned, written notice to the reporter and all counsel of record, given within two weeks after the reporter sends written notice to the deponent or the deponent's counsel that the transcript is available for review (the "hold period"), in which case all counsel receiving such notice shall be responsible for marking the copies of the designated transcript or portion thereof in their possession or control as directed by the producing party or deponent. If no such designation is made at the deposition, no such deposition transcript shall be disclosed to any person other than those persons who are entitled to have access to such materials pursuant to Paragraph 12 below and the deponent (and the

deponent's counsel in the case of a separately represented nonparty) during the hold period, and no person attending such a deposition shall disclose the contents of the deposition to any person other than those described in Paragraph 12 below during the hold period. The following legend shall be placed on the front of any deposition transcript (and, if videotaped, any copies of the videotape) containing CONFIDENTIAL information: CONFIDENTIAL.

7. If timely corrected, an inadvertent failure to designate Confidential Material as CONFIDENTIAL does not, standing alone, waive the designating party's right to secure protection under this Order for such material. If material is appropriately designated as CONFIDENTIAL after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the Confidential Material is treated in accordance with the provisions of this Order.

8. A party shall not be obligated to challenge the propriety of any designation of Confidential Material as CONFIDENTIAL at the time of designation, and a failure to do so shall not preclude a subsequent challenge to the designation. Notwithstanding anything in this Protective Order to the contrary, the parties acknowledge and agree that each party reserves the right to argue that any Confidential Material has been improperly designated and should not receive protected status under this Protective Order. Additionally, any party may seek additional protection with respect to Confidential Material as that party may consider appropriate.

9. If a party objects to any designation of information as CONFIDENTIAL, the parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved informally, the designating party may seek appropriate relief from the Court.

## USE

10. Confidential Material produced or made available for inspection for which the foregoing designation has been made shall be subject to this Protective Order and shall be received or inspected only by the authorized or designated person(s) authorized to do so in accordance with this Order.

11. Confidential Material designated CONFIDENTIAL shall be used only in connection with this Action, or any directly related proceeding or appeal therefrom, and shall not be used for any other purpose including, but not limited to, any other litigation. No recipient of Confidential Material shall, without express Order of the Court, use the Confidential Material in any business purpose, including but not limited to, research and development of any new or existing product. This limitation shall not prevent a Producing Party from using its own Confidential Material for its own business purposes, including but not limited to, research and development of any new or existing product.

12. All material designated CONFIDENTIAL shall be held in strict confidence and shall be protected from disclosure as specified herein, unless a party obtains an Order of the Court declaring that all or certain portions of the allegedly Confidential Material are not, in fact, protected. The substance or contents of any material designated CONFIDENTIAL, as well as any notes, abstracts, copies, summaries, and memorandum relating thereto, shall not be disclosed to or accessible by anyone other than a person qualified and/or authorized to obtain Confidential Material designated CONFIDENTIAL pursuant to this Protective Order.

13. Nothing in this Protective Order shall preclude a Producing Party from using or disseminating its own CONFIDENTIAL material.

## **DISCLOSURE**

14. Confidential Material designated CONFIDENTIAL may be disclosed only to:

a. Persons subject to the following limitation: each party is limited to allowing the information to be reviewed, examined and/or read by three (3) designated individuals, whose identity shall be disclosed to every other party. Each designated individual must read this Protective Order, agree to be bound by it and execute an Acknowledgement of Protective Order, in the form shown on Exhibit "A" to this Protective Order.

b. Any attorney representing a party or non-party participating in this action, and any person assisting such attorney, employed by the same law firm or organization as the attorney, and for whom access to Confidential Material is necessary to perform a duty with respect to this action. Any such persons must read this Protective Order and agree to be bound by it. The stipulation to this Protective Order by any member of a law firm or organization shall constitute a representation that all persons in or employed by that firm or organization shall agree to be bound by and observe this Protective Order.

c. Any expert or consultant qualified to have access to Confidential Material as provided in Paragraph 15 of this Protective Order.

d. Any personnel of the Court or other government employees for whom access to Confidential Material is necessary to perform a duty relating to this action, and any court reporters retained to record and transcribe testimony in this action.

e. Personnel of photocopy firms and/or graphics firms who have read and agree to be bound by the terms of this Protective Order. Only documents requiring duplication will be provided to such individuals.



15. Any party may designate experts or consultants, who are not regular employees of such party, and who may have access to Confidential Material. An expert or consultant shall qualify for access to Confidential Material designated as CONFIDENTIAL only as follows:

(a) The party seeking to disclose Confidential Material shall first have said expert or consultant complete and sign an acknowledgement form in the form shown as Exhibit B to this Protective Order.

(b) When a corporation or other organization is engaged as an expert or consultant by a party or its counsel of record, each natural person within such organization or corporation for whom access to Confidential Material is necessary to perform a duty with respect to this action shall first complete and sign an acknowledgement form in the form shown as Exhibit B to this Protective Order.

(c) If any expert or consultant engaged by the party seeking to disclose Confidential Material creates any report, document, or other item, whether intangible or tangible, related to this case, and such report or document contains Confidential Material, whether as content, exhibit, or otherwise, said report or document will have the same protected status as the Confidential Material contained therein. It will not be necessary for the expert's or consultant's report, document, or other item to be designated by either party as protected for such report, document, or other item to attain protected status pursuant to the parties' stipulation and this Protective Order.

16. It shall be the duty and responsibility of counsel of record to ensure that documents or things containing Confidential Material subject to counsel's control shall at all times be kept in a safe and secure fashion to ensure that such information is not disclosed to or made accessible to persons other than those specifically qualified and/or authorized to review Confidential Material under this

Protective Order. Counsel of record shall be directly responsible to the court for fulfilling this responsibility.

17. Should any party, or person qualified to obtain Confidential Material hereunder, or their agents or representatives, receive any request for information whether through formal compulsory process or lawful authority of the Court or otherwise, prior to responding thereto, such person or counsel shall promptly serve written notice of receipt of same on counsel of record for all parties hereto in order to allow said party or parties to move an appropriate court or tribunal for a ruling respective the necessity of compliance therewith.

#### **USE IN COURTROOM PROCEEDINGS**

18. Any Confidential Material designated as CONFIDENTIAL or any document or thing incorporating such material that is filed or lodged with the Court shall be so marked on the first page, sealed, and delivered to the Clerk of the Court, and shall not be available for public inspection. The envelope used to seal such information or document shall carry an appropriate notation indicating its status as CONFIDENTIAL and subject to this Protective Order. The Clerk shall maintain such material or document under seal. Any judge or magistrate exercising responsibility in this action, and his or her legal, administrative, secretarial or clerical staffs, shall have access to material under seal as necessary in adjudicating or administering this action.

#### **RESTRICTED INFORMATION**

19. The parties hereto recognize that, during the course of this litigation, a party may seek discovery of material that is (a) Classified and thereby restricted from unauthorized disclosure pursuant to Executive Order 13526 or any successor order ("Classified Information"), or (b) subject to the export authority of the U.S. State Department under the International Traffic in Arms

Regulations, 22 C.F.R. 120 et seq. ("ITAR Information"). (Classified Information and ITAR Information are collectively referred to herein as "Restricted Information".)

20. Notwithstanding any other provision in this Protective Order, if a party identifies any Restricted Information as responsive to a discovery request or otherwise subject to a duty to be disclosed in this Action, the party shall not be required to disclose the Restricted Information but shall identify such material to the requesting and/or receiving party as Restricted Information, by providing a log setting forth a description adequate to provide notice to the receiving party that the information is Restricted Information.

21. If a party identifies information as Restricted Information, the parties shall first try to resolve any dispute in good faith on an informal basis. If any dispute cannot be resolved informally, the requesting party may seek appropriate relief from the Court.

#### **RETURN / DESTRUCTION OF MATERIALS**

22. Within thirty (30) days after the termination of this action, the originals and all copies of Confidential Material designated as CONFIDENTIAL shall be destroyed or returned to the party that produced such information, or to its attorney, except that one copy of such information may be retained in the files of each attorney. Any information so retained shall be maintained pursuant to this Protective Order, and by retaining this information each attorney agrees to the continuing jurisdiction of this Court for purposes of enforcing this Protective Order.

#### **ATTORNEYS' EYES ONLY INFORMATION**

23. Any party may designate Confidential Material as "CONFIDENTIAL AND ATTORNEYS' EYES ONLY" if the designating party reasonably believes in good faith that (a) there is a substantial risk that disclosure of such Confidential Material to its competitor would result

in irreparable harm or injury to the designating party, and (b) such Confidential Material constitutes a design document or design file prepared by or on behalf of the designating party.

24. For purposes of paragraph 23(b) above, design documents and design files shall include, without limitation, design schedules, design and device specifications, circuit schematics, feature sets, netlists, RLT design files, test vectors, design rules, electrical rules, layout views, GDSII files, design/layout scripts, VCD data files, verification files, simulations, simulation results (graphical and test) and related information, and any documentation of any kind, name or nature, electronic or otherwise, containing information contained in a design document or design file. Design documents and design files shall not include, without limitation, that portion of any correspondence or emails describing business arrangements, engineers involved, or the general nature of the work to be done.

25. Notwithstanding the provisions of the foregoing paragraphs 23 and 24, that portion of any design documents or design files prepared (in whole or in part) by any of the Defendants in this action other than Zilog, shall not be designated as "ATTORNEYS' EYES ONLY," except that any portion of any document created by a Defendant may be designated as "ATTORNEYS' EYES ONLY" if production of such portion of the document to a party would enable that party to deduce the substance of design documents, design files or other design information provided by Zilog to another Defendant.

26. Confidential Material designated as "CONFIDENTIAL AND ATTORNEYS' EYES ONLY" by a party shall not be disclosed except in accordance with the provisions of this Protective Order.

27. Notwithstanding any other provision of this Protective Order, Confidential Material designated as "CONFIDENTIAL AND ATTORNEYS' EYES ONLY" by a designating party shall

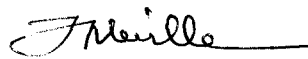
not, without the express written permission of the designating party or a further written Order of this Court, be disclosed to: (a) any employee of any other party; or (b) any of such other party's consultants or experts, except a consultant or expert (i) who is or has been specially retained by such other party's counsel for purposes of this litigation, (ii) who such other party agrees not to employ or retain for any other purpose at any time, and (iii) who executes Exhibit B to this Protective Order.

#### MISCELLANEOUS

28. Upon final termination of this action, whether by settlement, dismissal or other disposition, the provision of this Protective Order shall continue to be binding upon all persons or entities who are subject to the terms hereof, and the court shall retain jurisdiction for enforcement of this Order.

29. Each party reserves the right to request and/or petition the Court for modification of this Protective Order upon a showing of good cause.

DATED this 26<sup>th</sup> day of January, 2013.



F.

---

THOMAS F. NEVILLE  
District Court Judge

FM

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on the 24 day of January, 2013, I served a true and correct copy of the foregoing to:

John N. Zarian  
Peter M. Midgley  
Parsons Behle & Latimer  
960 Broadway Avenue, Suite 250  
Boise, ID 83706

☒ U.S. mail  
☐ Express mail  
☐ Hand delivery  
☐ Electronic delivery:  
Jzarian@ParsonsBehle.com  
Pmidgley@ParsonsBehle.com  
☐ Fax: 208-562-4901

Russell G. Metcalf  
17 E. Wyoming Avenue  
P. O. Box 385  
Homedale, ID 83628

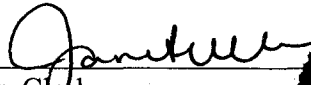
☒ U.S. mail  
☐ Express mail  
☐ Hand delivery  
☐ Electronic delivery: rmetcalf@cableone.net  
☐ Fax: 208-337-4854

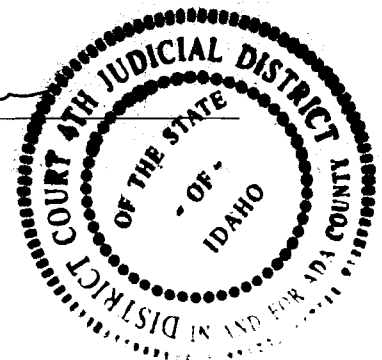
Gary L. Cooper  
Cooper & Larsen  
P. O. Box 4229  
Pocatello, ID 83205-4229

☒ U.S. mail  
☐ Express mail  
☐ Hand delivery  
☐ Electronic delivery: gary@cooper-larsen.com  
☐ Fax: 208-235-1182

CLERK OF THE COURT

By:

  
Deputy Clerk



**EXHIBIT A**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )

CASE NO. CV-OC-1123344

Plaintiff, )

vs. )

SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, RUSSELL LLOYD, )  
WILLIAM TIFFANY, EVELYN PERRYMAN, )  
and Defendants DOES I - X, )

PARTY'S QUALIFIED INDIVIDUAL'S  
ACKNOWLEDGMENT  
OF PROTECTIVE ORDER

Defendants. )

SAGE SILICON SOLUTIONS, LLC, an )  
Idaho limited liability company; DAVID )  
ROBERTS, GYLE YEARSLEY, RUSSELL )  
LLOYD, WILLIAM TIFFANY, EVELYN )  
PERRYMAN, individuals, )

Counterclaimants, )

vs. )

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )

Counterdefendant. )

1. My full name is: \_\_\_\_\_.
2. My address is: \_\_\_\_\_.
3. My present employer is: \_\_\_\_\_.
4. My present occupation or job describe is: \_\_\_\_\_.
5. I also serve as an employee, agent, officer or director of the following entities:  
\_\_\_\_\_  
\_\_\_\_\_.

6. I have receive a copy of the Protective Order entered in this action. I have carefully read and understand the provisions of the Protective Order, I will comply with all of the provisions of the Protective Order.

7. I will not disclose any information designated as Confidential Material or CONFIDENTIAL or CONFIDENTIAL AND ATTORNEY'S EYES ONLY to anyone not identified in Paragraphs 14 or 15 of the Protective Order or use or disclose any such information for any purpose other than the prosecution or defense of the above-referenced lawsuit. In addition, I will not disclose any information designated as CONFIDENTIAL AND ATTORNEY'S EYES ONLY by one party to: (a) any employee of any other party; or (b) any of such other party's consultants or experts, except a consultant or expert (i) who is or has been specially retained by such other party's counsel for purposes of this litigation, (ii) who such other party has agreed not to employ or retain for any other purpose at any time, and (iii) who has executed Exhibit B to the Protective Order.

8. I will return all Confidential Material that comes into my possession, and all documents or things which I have prepared relating to such information, to an attorney representing the party that has employed or retained me.



9. I submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

---

**EXHIBIT B**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
Plaintiff, )

CASE NO. CV-OC-1123344

vs. )  
SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, RUSSELL LLOYD, )  
WILLIAM TIFFANY, EVELYN PERRYMAN, )  
and Defendants DOES I - X, )  
Defendants. )

EXPERT OR CONSULTANT'S  
ACKNOWLEDGMENT OF  
PROTECTIVE ORDER

SAGE SILICON SOLUTIONS, LLC, an )  
Idaho limited liability company; DAVID )  
ROBERTS, GYLE YEARSLEY, RUSSELL )  
LLOYD, WILLIAM TIFFANY, EVELYN )  
PERRYMAN, individuals, )  
Counterclaimants, )

vs. )  
AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
Counterdefendant. )

1. My full name is: \_\_\_\_\_.
2. My address is: \_\_\_\_\_.
3. My present employer is: \_\_\_\_\_.
4. My present occupation or job description is: \_\_\_\_\_.

5. I have had no prior regular employment with any party to this action, except as follows: \_\_\_\_\_.

6. I also serve as an employee, agent, officer or director of the following entities: \_\_\_\_\_.

7. I have received a copy of the Protective Order entered in this action. I have carefully read and understand the provisions of the Protective Order. I will comply with all of the provisions of the Protective Order.

8. I will not disclose any information designated as Confidential Material or CONFIDENTIAL or CONFIDENTIAL AND ATTORNEY'S EYES ONLY to anyone not identified in Paragraphs 14 or 15 of the Protective Order or use or disclose any such information for any purpose other than the prosecution or defense of the above referenced lawsuit. In addition, I will not disclose any information designated as CONFIDENTIAL AND ATTORNEY'S EYES ONLY by one party to: (a) any employee of any other party; or (b) any of such other party's consultants or experts, except a consultant or expert (i) who is or has been specially retained by such other party's counsel for purposes of this litigation, (ii) who such other party has agreed not to employ or retain for any other purpose at any time, and (iii) who has executed Exhibit B to the Protective Order.

9. I will return all Confidential Material that comes into my possession, and all documents or things which I have prepared relating to such information, to the attorney who specially employed or retained me for purposes of this lawsuit.

10. I submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

---

ORIGINAL

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
PARSONS BEHLE & LATIMER  
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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 11:15 P.M.

FEB 11 2013

CHRISTOPHER D. RICH, Clerk  
By CHELSIE PINKSTON  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS, GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

---

RELATED COUNTER ACTIONS

---

**Case No. CV OC 1123344**

**MOTION TO ENFORCE THE  
COURT'S JANUARY 11, 2013 ORDER**

*The Honorable Thomas F. Neville*

Pursuant to Rule 37(b) of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") hereby respectfully moves the Court to enforce its January 11, 2013 Order requiring Defendants to produce documents pursuant to the operative Protective Order in this case. Under the circumstances, ASI also requests that its expenses incurred in making this motion be reimbursed by the defendants from whom discovery remains due and outstanding. The basis for this motion is more fully set forth in ASI's supporting Memorandum and the Declaration of John N. Zarian, both of which are filed concurrently herewith.

DATED this 8th day of February, 2013.



---

JOHN N. ZARIAN  
PARSONS BEHLE & LATIMER

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8 day of February, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
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Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Email: gary@cooper-larsen.com  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Telecopy

Russell G. Metcalf  
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*Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany*

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\_\_\_\_\_  
John N. Zarian

ORIGINAL

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
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KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS, GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

---

RELATED COUNTER ACTIONS

---

NO. \_\_\_\_\_ FILED  
A.M. 11:15 P.M. \_\_\_\_\_

FEB 11 2013

CHRISTOPHER D. RICH, Clerk  
By CHELSIE PINKSTON  
DEPUTY

**Case No. CV OC 1123344**

**DECLARATION OF JOHN N. ZARIAN  
IN SUPPORT OF PLAINTIFF'S  
MOTION TO ENFORCE THE  
COURT'S JANUARY 11, 2013 ORDER**

*The Honorable Thomas F. Neville*



I, John N. Zarian, declare as follows:

1. I am duly licensed to practice law in the State of Idaho and before this Court, and I am a shareholder with the law firm of Parsons Behle & Latimer. I am an attorney of record for plaintiff American Semiconductor, Inc. ("ASI" or "Plaintiff") in the above-referenced action. I make this declaration based upon my own personal knowledge and, if called upon, could and would testify competently as to the truth of the factual matters contained herein.

2. I submit this declaration in support of ASI's Motion to Enforce the Court's January 11, 2013 Order, filed concurrently herewith.

3. On January 11, 2013, the Court ordered Defendants to produce (pursuant to the terms of the Protective Order) documents responsive to ASI's outstanding discovery requests. Counsel for Defendants requested twenty days to produce those documents. The Court allowed such time and ordered that non-redacted documents be produced by January 31, 2013.

4. Defendants failed to produce any documents by January 31, 2013.

5. On February 1, 2013, via email, I contacted Defendants' counsel (Gary Cooper) to inquire regarding the status of production. During our email exchange, Mr. Cooper responded that he had been "overly optimistic about how long it would take" to prepare the documents for production, and that he was still working on the matter with "[his] clients and Zilog." When I requested that Mr. Cooper propose a date certain for production, he indicated that he was "hoping" to produce documents in two weeks, but could not commit to a date certain.

6. In response, I stated my willingness to consider a brief extension, but emphasized that I would need a "date certain" for production.

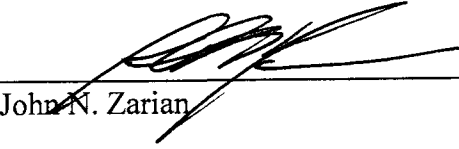
7. On February 5, 2013, five days after the January 31 deadline, I once again requested a date certain and Mr. Cooper replied: "I advised you earlier that I was hoping for two

weeks. I am not sure what more I can say at this point.”

8. To date, I have not received any additional documents from any of the Defendants since the hearing in this matter on January 11, 2013. Furthermore, I have not received any further communication from Defendants’ counsel since February 5, 2013.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Executed on the 8th day of February, 2013, at Boise, Idaho.

  
\_\_\_\_\_  
John N. Zarian

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8th day of February, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2<sup>nd</sup> Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Email: gary@cooper-larsen.com  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

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Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
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Homedale, ID 83628  
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Email: rmetcalf@cableone.net  
*Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany*

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\_\_\_\_\_  
John N. Zarian

Neville  
Sent  
2-12-13  
R

ORIGINAL

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
PARSONS BEHLE & LATIMER  
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KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

NO. \_\_\_\_\_ FILED  
A.M. 11:15 P.M.

FEB 11 2013

CHRISTOPHER D. RICH, Clerk  
By CHELSIE PINKSTON  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS, GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION TO ENFORCE  
THE COURT'S JANUARY 11, 2013  
ORDER

*The Honorable Thomas F. Neville*

Pursuant to Rule 37(b) of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") respectfully submits this memorandum in support of its Motion to Enforce the Court's January 11, 2013 Order.

### INTRODUCTION

Nearly eight months ago, on June 12, 2012, the Court granted ASI's Motion to Compel and ordered certain responding defendants ("Defendants") to produce documents relating to ASI's claims. However, Defendants refused to produce non-redacted copies of the documents because of stated concerns regarding confidentiality. On June 25, 2011, after counsel were unable to reach an agreement concerning the protection of any confidential information in the documents ordered to be produced, Defendants filed a Motion for Protective Order.

During the ensuing seven months, the parties painstakingly negotiated the terms of a proposed protective order resulting in several hearings relating to both the proposed protective order and an associated extension of time to serve the complaint in this action on defendant Zilog, Inc. ("Zilog") Throughout this process, Defendants insisted that the protective order include extensive limitations on access to information and provide a very high level of confidentiality, including the designation of information as "attorneys eyes only."

On January 11, 2013, this Court accommodated Defendants' stated concerns – presumably to allow for efficiencies in discovery while safeguarding any potentially confidential information. The parties submitted, and the Court entered, a final Protective Order in this case.

Also on January 11, 2013, the Court ordered Defendants to produce (pursuant to the terms of the Protective Order) documents responsive to ASI's outstanding discovery requests. Counsel agreed that Defendants should have twenty days to produce those documents. The Court allowed such time and ordered that responsive documents be produced by January 31, 2013.

Unfortunately, Defendants failed to produce any documents on January 31, 2013, in direct violation of the foregoing order. Indeed, no documents have been produced as of this date.

As set forth in the accompanying Declaration of John Zarian, on February 1, 2013, ASI's counsel reached out to counsel for Defendants to inquire about the status of production. On that date, and in subsequent email exchanges, ASI's counsel repeatedly asked counsel for Defendants to provide a "date certain" by which any documents will be produced. Unfortunately, counsel for Defendants could not commit to a date certain for production of any documents.

Thus, no documents were produced on or before January 31, 2013, and ASI has yet to receive any documents since the hearing before this Court on January 11, 2013.

### ARGUMENT

Rule 37(b) of the Idaho Rules of Civil Procedure authorizes the Court to impose a wide range of sanctions on a party failing to comply with a discovery order. Specifically, the Court may, among other things, impose the following sanctions on the disobedient party:

- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

Idaho R. Civ. P. 37(b)(2).

The foregoing sanctions are available in cases where, as here, a party fails to comply with a court's discovery order.

Presently, ASI requests that the Court enforce its Order issued on January 11, 2013 that Defendants produce, pursuant to the terms of the newly entered Protective Order, documents and information responsive to ASI's previous discovery requests. In addition, pursuant to Rule 37(b), ASI requests that the Court award reasonable expenses incurred in making this motion against the Defendants.

As this Court is aware, the underlying document requests at issue were served almost one year ago, and this Court granted ASI's Motion to Compel nearly eight months ago. The documents and information at issue should have been (and presumably were) retrieved long ago, and their production ostensibly awaited only the entry of a Protective Order to address Defendants' alleged confidentiality concerns. Nevertheless, as of today, Defendants have not produced a single additional document.

ASI submits that Defendants should not be allowed to delay any longer.

#### **CONCLUSION**

For the forgoing reasons, ASI respectfully requests that this Court grant the instant Motion to Enforce the Court's January 11, 2013 Order.

DATED this 8th day of February, 2013.

  
\_\_\_\_\_  
JOHN N. ZARIAN  
PARSONS BEHLE & LATIMER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8th day of February, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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COOPER & LARSEN CHARTERED  
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Email: gary@cooper-larsen.com  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

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\_\_\_\_\_  
John N. Zarian



ORIGINAL

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KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS, GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

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RELATED COUNTER ACTIONS

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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 311

MAY 31 2013

CHRISTOPHER D. RICH, Clerk  
By JERI HEATON  
DEPUTY

Case No.: CV OC 1123344

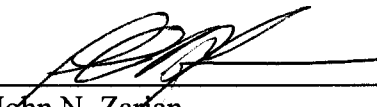
*The Honorable Thomas F. Neville*

**PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S  
MOTION TO COMPEL**

Pursuant to Rule 37(b) of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") hereby respectfully moves for an order compelling defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany (collectively, the "Sage Defendants") to supplement their productions in order to fully respond to ASI's discovery requests seeking (a) certain design records, and (b) tax records for the individual defendants. ASI also seeks an order compelling the Sage Defendants to (a) properly apply confidentiality designations in accordance with the protective order presently in force, and (b) either confirm the scope of their productions or re-produce a complete set of properly Bates-numbered documents. In addition, under the circumstances, ASI requests that its expenses incurred in making this motion be reimbursed by the Sage Defendants from whom discovery remains due and outstanding. The basis for this motion is more fully set forth in ASI's supporting Memorandum and the accompanying Declaration of John N. Zarian, both of which are filed concurrently herewith.

DATED this 31 day of May, 2013.

PARSONS BEHLE & LATIMER

By   
John N. Zarian  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

**CERTIFICATE OF SERVICE**

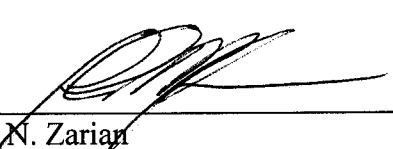
I HEREBY CERTIFY that on the 31 day of May, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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COOPER & LARSEN CHARTERED  
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*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
corporation; ZILOG, INC., a Delaware corporation;  
DAVID ROBERTS; GYLE YEARSLEY; RUSSELL  
LLOYD; WILLIAM TIFFANY; EVELYN  
PERRYMAN; and Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S  
MOTION TO COMPEL**

MAY 31 2013

CHRISTOPHER D. RICH, Clerk  
By JERI HEATON  
DEPUTY

Pursuant to Rule 37(b) of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") respectfully submits the following memorandum in support of its Motion to Compel.

### **INTRODUCTION**

Having had at least *eighteen months* to comply with ASI's discovery requests seeking disclosure of information relevant to this action, defendant Sage Silicon Solutions, LLC ("Sage") and individual defendants David Roberts, Gyle Yearsley and William Tiffany ("Individual Defendants") (collectively, the "Sage Defendants") have yet to comply fully with their discovery obligations. Accordingly, and regrettably, ASI has been forced to file the instant motion to compel to mitigate and redress the mounting prejudice occasioned by the Sage Defendants' failures to comply. By this motion, ASI seeks an order directing the Sage Defendants, and each of them, to supplement their discovery responses and document production as requested by ASI.

### **BACKGROUND**

#### **A. OVERVIEW OF THE LAWSUIT**

In its Complaint, ASI asserts that various individuals, who were at various times ASI employees, formed Sage Silicon Solutions, LLC ("Sage") in violation of their respective confidentiality agreements with ASI. At no time did ASI permit these named individuals to organize Sage or to represent that Sage was working in cooperation with ASI, nor did ASI ever release these individuals from their express contractual obligations with ASI.

As alleged in the Complaint, Sage and the individual defendants began offering design and other services to third parties, including Zilog, Inc. ("Zilog"), all the while making unauthorized uses of ASI equipment. ASI did not receive any compensation from Sage or the named individuals for such services. As set forth in the Complaint, defendants' actions have

impeded or interfered with ASI's ability to offer its services in the open market, resulting in lost earnings and profits to ASI.

Based on the foregoing, ASI asserts various claims in this lawsuit, namely, (a) breach of contract against the individuals, (b) breach of fiduciary duty against the individuals, (c) breach of the implied covenant of good faith and fair dealing against Sage and the individuals, (d) tortious interference with economic advantage and contract against Sage and the individuals, (e) misappropriation of trade secrets against Sage and the individuals, (f) improper appropriation of ASI's name against Sage and the individuals, (g) unjust enrichment against Sage and the individuals, (h) violations of Idaho's consumer protection act against Sage and the individuals, (i) declaratory relief against Sage, the individuals and Zilog, and (j) injunctive relief against Sage, the individuals, and Zilog.

#### **B. HISTORY OF NON-COMPLIANCE WITH DISCOVERY OBLIGATIONS**

ASI served its first set of discovery requests to the Sage Defendants – comprising interrogatories, requests for production and requests for admission – on December 18, 2011. [See Motion to Compel, filed March 26, 2012]. In response, the Sage Defendants produced some records that were either encrypted or redacted, thus making them indecipherable. [Id.] The Sage Defendants' unsatisfactory production prompted ASI to file a motion to compel, which motion was granted by the Court on June 12, 2012. [See Order re Motion to Compel, entered June 12, 2012]. In its ruling, the Court granted ASI's motion to compel subject to the entry of a protective order. [Id.]

During the ensuing seven months, the parties painstakingly negotiated the terms of a protective order. The parties have since submitted, and the Court has since entered, a protective order in this case. [See Protective Order, entered January 29, 2013 (hereinafter, "Protective Order")].

On January 11, 2013, the Court ordered the Sage Defendants to produce (pursuant to the terms of the Protective Order) documents responsive to ASI's outstanding discovery requests. Counsel agreed that Defendants should have twenty (20) days – that is, until January 31, 2013 – in which to produce those documents. The Court allowed such time and ordered that responsive documents be produced by January 31, 2013.

As of February 8, 2013, however, in violation of the Court's order, the Sage Defendants had failed to produce any records. This discovery violation prompted ASI to file a motion to enforce the Court's January 11, 2013 order. [See Plaintiff's Motion to Enforce the Court's January 11, 2013 Order, filed February 11, 2013]. ASI's motion to enforce is currently pending.

Several days later, on February 14, 2013, the Sage Defendants served supplemental and amended responses to the ASI discovery requests served in December 2011. ASI immediately noted deficiencies with the supplemental and amended responses, and commenced the process of conferring with the Sage Defendants in an effort to resolve outstanding issues without resort to motion practice. As noted below, several unresolved issues remain.

### **C. UNRESOLVED DISCOVERY ISSUES**

#### **1. Design Records from Sage and Third Parties**

ASI requested that the Sage Defendants produce documents related to design data used by the Sage Defendants in providing services to any third party including Zilog:

**REQUEST FOR PRODUCTION NO. 2:** Please produce copies or originals of all design data including, but not limited to, design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs utilized by You, Your agents and/or employees in providing services to third-parties other than Plaintiff, including Zilog.

**REQUEST FOR PRODUCTION NO. 7:** Please produce each photograph, print, negative, videotape, sketch, diagram or drawing or other such similar Document in Your possession or control which in any way Relates to the subject of this Incident.

The Sage Defendants have produced *some* responsive design records reflecting work they performed for Zilog. However, they have produced no records reflecting the actual work that they did specific to Sage or that was done for third parties. Additionally, they have produced no actual design files at all. Notwithstanding prior representations that they have produced all responsive records and that they have searched all computers within their possession, custody or control, the Sage Defendants have subsequently revealed the existence of at least one computer system that had not been searched at the time those representations were made. [*Zarian Decl. Ex. I*]. Clearly, that recent revelation regarding the existence of additional records raises questions on the representations regarding the completeness of the Sage Defendants' productions of design-related records. Despite repeated requests, to date, the Sage Defendants have not provided a list of computers that have been actually searched for responsive records, relying instead on vague (and apparently inaccurate) assertions that all computers have been searched. In addition to requesting documents that the Sage Defendants utilized for their work for Zilog, the foregoing requests also sought production of documents utilized in providing services to other third parties.

**2. Tax Records for the Individual Defendants**

ASI requested production of Sage's corporate tax records as well as the tax records for the Individual Defendants:

**REQUEST FOR PRODUCTION NO. 10:** Please produce federal income tax returns filed by You since Sage Silicon Solutions was organized.



**REQUEST FOR PRODUCTION NO. 11:** Please produce copies of each federal and state tax form prepared by You, Your agents and/or employees, including but not limited to forms for payment of wages to employees (such as W2 forms), Form 940, and Form 941.

The foregoing records are directly relevant to proof of the Sage Defendants' income and unjust enrichment. In response to ASI's requests, Sage produced only a handful of corporate tax records. The Individual Defendants, for their part, have refused to produce *any* individual tax records (hereinafter, "Individual Tax Records") [*See e.g. Zarian Decl., Ex. I*].

### **3. Improper Confidentiality Designations**

Under the terms of the Protective Order, "Confidential Material" is defined as "information or tangible things that qualify for protection under standards developed under I.R.C.P. 26(c), including trade secrets or confidential research, development or commercial information." [Protective Order, ¶ 2]. Furthermore, ATTORNEYS' EYES ONLY designations are reserved for material which "the designating party reasonably believes in good faith that (a) there is substantial risk that disclosure of such Confidential Material to a competitor would result in irreparable harm or injury to the designating party, and (b) such Confidential Material constitutes a design document or design file by or on behalf of the designating party." [Protective Order, ¶ 23].

The Sage Defendants have repeatedly misapplied the foregoing standards in their confidentiality designations. For example, in versions of documents *not* designated as "ATTORNEYS' EYES ONLY," the Sage Defendants redacted names or individuals sending or receiving e-mails and names of certain corporate entities. [*See e.g. Zarian Decl., Ex. E*]. In addition, the Sage Defendants' subsequent April 12, 2013 production improperly designated numerous documents as "CONFIDENTIAL," including published scholarly articles, a form

operating agreement for an LLC, Sage's operating agreement, and a W-9 instruction tax form. [See e.g. Zarian Decl., Ex. G].

In view of the foregoing improper designations, ASI requested that the Sage Defendants re-produce pages 1-237 from the February 14, 2013 production and the documents produced as part of the April 12, 2013 production in a *properly* redacted and *properly* designated manner. [Id.] The Sage Defendants have failed or refused to do so. [See e.g. Zarian Decl., Ex. I].

#### **4. Incomplete and/or Inconsistently Bates-Numbered Productions**

The Sage Defendants have made two productions of documents, first without and then with Bates numbers – initially representing the second production was a “complete” production but never able to explain why it was less than half the size of the first. [See Zarian Decl., Ex. C]. In light of documented Bates numbering discrepancies occasioned by the Sage Defendants' inconsistently numbered and apparently overlapping productions, ASI requested that the Sage Defendants (a) confirm that the February 14, 2013 production includes a complete production of all documents responsive to ASI's document requests, and (b) produce a complete set of documents produced to date, with Bates numbers, to aid in identification and to avoid confusion as to the thousands of pages produced by the Sage Defendants. [See Zarian Decl., Ex. E]. To date, they have failed or refused to do so. [See Zarian Decl., Ex. I].

Further, in correspondence dated May 3, 2013, ASI invited the Sage Defendants to certify that the February 14, 2013 production, together with any subsequent document productions, constitute a full and complete production of all documents responsive to ASI's document requests. [See Zarian Decl., Ex. G]. To the extent that the Sage Defendants were unable to make the requested certification in good faith, ASI requested that the Sage Defendants re-produce all previously produced documents with consistent Bates numbering as a means of

clarifying their production thus allowing the parties to move past that issue. [*Id.*] Again, the Sage Defendants have failed to do so. [*See* Zarian Decl., Ex. I].

**D. ASI'S EFFORTS TO INFORMALLY RESOLVE THIS DISCOVERY DISPUTE**

Beginning on March 7, 2013, counsel for ASI initiated a good faith attempt to meet and confer with counsel for the Sage Defendants in the hopes of informally resolving the issues set forth above. In a letter to counsel dated March 7, 2013, ASI's counsel explained, in detail, ASI's concerns with the Sage Defendants' responses to its document requests.

While counsel for defendants undertook to explain the various enumerated concerns in correspondence dated March 15, 2013, several issues remained unaddressed (or unsatisfactorily addressed) prompting follow-up correspondence from ASI's counsel dated March 29, 2013.

The Sage Defendants' counsel responded by letter on April 12, 2013 – a response that failed meaningfully to address ASI's concerns. This failure to address ASI's ongoing concerns led to a third letter dated May 3, 2013 from ASI's counsel requesting substantive responses by the close of business on May 10, 2013.

As a consequence of the Sage Defendants' failure to substantively respond to the May 3, 2013 letter, the undersigned advised counsel on May 20, 2013 that ASI intended to file the instant motion, since it appeared that the parties were at an impasse and given the need to move this litigation towards a resolution on the merits.

Counsel for the Sage Defendants responded by letter dated May 28, 2013. Notwithstanding counsel's representations regarding design documents, issues regarding the completeness of Sage Defendants' responses persist. Furthermore, the Sage Defendants' positions regarding tax returns, Bates numbering inconsistencies, and improper confidentiality designations remained unchanged.

Copies of the foregoing correspondence are attached to the Declaration of John Zarian as Exhibits C through I.

### **LEGAL STANDARD**

Rule 26 of the Idaho Rules of Civil Procedure provides that a party “may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” I.R.C.P. 26(b)(1).

Further, Rule 37 provides that “. . . if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.” I.R.C.P. 37(a)(1). For purposes of Rule 37(a), “an evasive or incomplete answer is to be treated as a failure to answer.” I.R.C.P. 37(a)(4).

### **ARGUMENT**

#### **A. DESIGN RECORDS REFLECTING WORK PERFORMED FOR ZILOG AND OTHER THIRD PARTIES SHOULD BE PRODUCED IMMEDIATELY**

The Sage Defendants have produced some design documents in relation to work they performed for or on behalf of Zilog. In spite of their representations that they have produced all discoverable records, however, the Sage Defendants now state that at least one computer in their possession, custody or control was *not* searched – resulting in a belated discovery of additional records. Thus, the Sage Defendants’ position on this issue continues to be a moving target – an evolution that impedes the resolution of this dispute. Even now, instead of immediately

producing the additional records, the Sage Defendants have resorted to the vague assertion that the additional records will be produced at an unspecified time in the future.

Of course, this pattern of stringing the parties' dispute out indefinitely is prejudicial to ASI and leaves ASI with no option but to seek redress through motion practice.

To date, the Sage Defendants have yet to respond meaningfully to ASI's request that they provide a list of computers that they searched as part of their efforts to locate and produce discoverable records. Clearly, the need for the Sage Defendants to provide such a list is underscored by the belated discovery of additional records as a result of the Sage Defendants' failure to search *all* computers within their possession, custody or control for responsive records.

The Sage Defendants' response to the document requests at issue – Request Nos. 2 and 7 – are woefully deficient in light of the allegations in ASI's Complaint that the Sage Defendants (a) offered design and other services to third parties (including Zilog) while utilizing ASI equipment, and (b) failed to compensate ASI for such services. Clearly, design documents reflecting *all* of the work performed by the Sage Defendants for Zilog and other third parties are discoverable. The Sage Defendants do not contend otherwise.

Thus, in light of the design documents' relevance to ASI's claims in this lawsuit, the Court should issue an appropriate order compelling the Sage Defendants to (a) immediately produce any and all discoverable records in their possession, custody or control, and (b) provide a list of all computers in their possession, custody or control that have been searched for responsive design records.

#### **B. THE INDIVIDUAL DEFENDANTS' TAX RECORDS ARE DISCOVERABLE**

As noted above and documented in correspondence exchanged between counsel, the Individual Defendants have refused to produce any Individual Tax Records.

As repeatedly explained to the Sage Defendants, the Individual Tax Records are relevant to the present lawsuit because, at a minimum, they may evidence payments made to, from, or among the various defendants for work referenced in the Complaint – particularly payments made to the Individual Defendants for work performed in violation of their respective employment agreements with ASI. As such, the Individual Tax Records are directly probative of damages suffered by ASI as a result of the Individual Defendants breaches of their respective agreements with ASI.

To the extent the Individual Defendants have any legitimate concerns regarding the confidentiality or sensitivity of their tax returns, any such concerns have been appropriately addressed by the entry of a Protective Order by this Court.

Therefore, the Court should issue an appropriate order compelling the Individual Defendants to produce their federal and state income tax records as requested by ASI in Request Nos. 10 and 11.

**C. DEFENDANTS SHOULD DESIGNATE THEIR DOCUMENTS APPROPRIATELY UNDER THE TERMS OF THE PROTECTIVE ORDER**

As set forth in the examples highlighted in the background section above, the Sage Defendants have repeatedly misapplied the “CONFIDENTIAL” and “ATTORNEYS’ EYES ONLY” designations, thereby concealing information that does not qualify for such protection under the express terms of the Protective Order.

For example, the Sage Defendants have yet to offer any justification as to why the names of individuals, their e-mail addresses, and the identity of their employers all qualify for designation as “ATTORNEYS’ EYES ONLY” (they do not). Similarly, the Sage Defendants cannot offer any justification as to how, under the terms of the Protective Order, scholarly articles and business formation records can be designated as “CONFIDENTIAL.”

Clearly, these designations, and several others like them, are not made based on a good faith belief that the material at issue constitutes or embodies information that satisfies the definition of Confidential Material as set forth in paragraph 2 of the Protective Order. As a result, the Sage Defendants' confidentiality designations are not well taken and, indeed, amount to a clear abuse of the confidentiality provisions of the Protective Order.

Consequently, the Court should issue an appropriate order requiring the Sage Defendants to re-produce pages 1-237 from the February 14, 2013 production and the documents produced as part of the April 12, 2013 production with confidentiality designations, to the extent necessary, that are consistent with the Protective Order.

**D. DEFENDANTS SHOULD BE REQUIRED TO PRODUCE A FULL AND CONSISTENTLY BATES LABELED SET OF RESPONSIVE DOCUMENTS**

As noted above, the Sage Defendants inconsistently numbered two apparently overlapping productions, resulting in confusion as to whether the Sage Defendants' productions, taken together, are even complete. Surely, the obligation to properly label and keep track of document produced falls squarely with the Sage Defendants. However, when requested to confirm that the February 14, 2013 production (together with subsequent productions) comprise a complete production of all documents or, in the alternative, to produce a complete set of documents produced to date as a means of aiding the parties in identifying the scope of the Sage Defendants' productions, the Sage Defendants refused.

The Sage Defendants failure to confirm the scope of their productions and/or to re-produce a complete set of documents produced with consistent Bates numbering continues to prejudice ASI in its prosecution of this action. Without confirmation of the scope of the Sage Defendants' productions and setting aside the other concerns enumerated above, there is no way

for ASI to tell whether the Sage Defendants have fulfilled their discovery obligations. The Sage Defendants' conduct is certain to cause additional confusion during discovery in this case.

Accordingly, the Court should issue an appropriate order requiring the Sage Defendants either to confirm the scope of their productions or, in the alternative, to re-produce any and all documents previously produced with a consistent Bates numbering scheme.

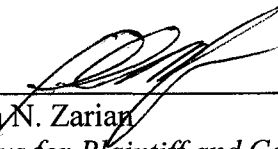
**CONCLUSION**

For the foregoing reasons, the Court should grant ASI its requested relief.

DATED this 31 day of May, 2013.

PARSONS BEHLE & LATIMER

By

  
John N. Zarian

*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 31 day of May, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2<sup>nd</sup> Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Email: gary@cooper-larsen.com  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Email: rmetcalf@cableone.net  
*Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

  
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John N. Zarian

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Janet  
6/3/13  
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A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

MAY 31 2013

CHRISTOPHER D. RICH, Clerk  
By JERI HEATON  
DEPUTY

ORIGINAL

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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
corporation; ZILOG, INC., a Delaware corporation;  
DAVID ROBERTS; GYLE YEARSLEY; RUSSELL  
LLOYD; WILLIAM TIFFANY; EVELYN  
PERRYMAN; and Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**DECLARATION OF JOHN N.  
ZARIAN IN SUPPORT OF  
PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S MOTION  
TO COMPEL**

788

I, John N. Zarian, declare as follows:

1. I am duly licensed to practice law in Idaho and before this Court, and I am a shareholder with the law firm of Parsons Behle & Latimer. I am an attorney of record for plaintiff American Semiconductor, Inc. ("ASI" or "Plaintiff") in the above-referenced action. I make this declaration based upon my own personal knowledge and, if called upon, could and would testify competently as to the truth of the factual matters contained herein.

2. I submit this declaration in support of ASI's Motion to Compel, filed concurrently herewith.

3. Attached hereto as **Exhibit A** is a true and correct copy of ASI's First Set of Interrogatories, Requests for Production and Requests for Admission to Defendant Sage Silicon Solutions dated December 2, 2011.

4. Attached hereto as **Exhibit B** is a true and correct copy of Defendants' Responses to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission served on January 27, 2012.

5. Attached hereto as **Exhibit C** is a true and correct copy of correspondence I sent to counsel for defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany (collectively, the "Sage Defendants") dated March 7, 2013 concerning deficiencies in their responses to ASI's discovery requests. Specifically, I raised concerns regarding the completeness of the Sage Defendants' production of design records, their failure to produce their individual tax returns, inconsistencies with the Bates numbering scheme of documents produced, and improper confidentiality designations.

6. Attached hereto as **Exhibit D** is a true and correct copy of correspondence from counsel for the Sage Defendants dated March 15, 2013 in response to my March 7, 2013 letter regarding the Sage Defendants' deficient discovery responses.

7. Attached hereto as **Exhibit E** is a true and correct copy of follow-up correspondence I sent to counsel for the Sage Defendants dated March 29, 2013 highlighting various concerns with respect to these defendants' deficient discovery responses that remained unaddressed and required prompt attention on their part.

8. Attached hereto as **Exhibit F** is a true and correct copy of a correspondence dated April 12, 2013 that I received from counsel for the Sage Defendants in response to my March 29, 2013 correspondence.

9. Attached hereto as **Exhibit G** is a true and correct copy of correspondence I sent to counsel for the Sage Defendants dated May 3, 2013 further highlighting the discovery issues highlighted in the accompanying motion and memorandum that required prompt attention from the Sage Defendants. In this correspondence, I requested that counsel for the Sage Defendants provide a response by May 10, 2013.

10. Having received no response to the May 3, 2013 correspondence as of May 20, 2013 – ten days after the requested date of compliance, I sent counsel for the Sage Defendants a further follow-up letter dated May 20, 2013 emphasizing the need for the Sage Defendants to comply with ASI's discovery requests. I further advised that the Sage Defendants' failures to comply in light of the repeated requests left ASI with no option but to, regrettably, resort to motion practice. Attached hereto as **Exhibit H** is a true and correct copy of the May 20, 2013 correspondence.

11. In response to the above-referenced May 20, 2013 correspondence, counsel for the Sage Defendants sent me a letter dated May 28, 2013. Attached as **Exhibit I** is a true and correct copy of the May 28, 2013 letter.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing  
is true and correct.

Executed on the 31 day of May, 2013, at Boise, Idaho.



---

John N. Zarian

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 31 day of May, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2<sup>nd</sup> Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Email: gary@cooper-larsen.com  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

☒ U.S. Mail, Postage Prepaid  
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☐ Telecopy

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Homedale, ID 83628  
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Facsimile: (208) 337-4854  
Email: rmetcalf@cableone.net  
*Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

  
\_\_\_\_\_  
John N. Zarian

# Exhibit A

COPY

Brian K. Julian, ISB 2360  
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSS LLOYD, BILL  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I – X,

Defendants.

Case No.

PLAINTIFF'S FIRST SET OF  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION AND  
REQUESTS FOR ADMISSION TO  
DEFENDANT SAGE SILICON  
SOLUTIONS

TO: DEFENDANT SAGE SILICON SOLUTIONS, LLC

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby requests that you answer, under oath, the following Interrogatories, Requests for Admission, and Requests for Production within thirty (30) days of service hereof, in accordance with provisions of Rules 33, 34 and 36 of the Idaho Rules of Civil Procedure.

PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION  
TO DEFENDANT SAGE SILICON SOLUTIONS - 1

000345



## INSTRUCTIONS AND DEFINITIONS

In answering the Interrogatories, furnish all information available to you, including information in the possession of your attorneys (and investigators, experts, etc., retained by you and your attorneys), not merely information known of your own personal knowledge. If you cannot respond to the following in full, after exercising due diligence to secure the information to do so, so state, then respond to the extent possible, specifying your inability to respond to the remainder, and stating whatever information and knowledge you have concerning the unanswered portion.

You may respond to the Requests for Production of Documents by producing for inspection and/or reproduction the originals or true and correct copies of the documents and items listed below, in whatever form, whether electronic, written, Xeroxed, filmed or otherwise, at the offices of Anderson, Julian & Hull LLP, 250 South 5<sup>th</sup> Street, P. O. Box 7426, Boise, Idaho 83707-7426, within thirty (30) days of service hereof.

These Interrogatories and Requests for Production are deemed continuing, and your Answers and Responses thereto are to be supplemented as additional information and knowledge becomes available or known to you.

The following definitions will be used with respect to these Interrogatories and Requests:

1. The word "You" and/or "Your" refers to the parties addressed herein, as well as the parties' employees, agents, attorneys, representatives, servants, and any expert witnesses expected to testify at trial.

2. The word "Document" means any written, typed, graphic or printed matter, in its entirety, including any addenda, supplements, amendments, revisions, exhibits, and appendices thereto, in its original form (or copies thereof where bearing notations, memoranda or other written information not on the original) including, but not limited to, books, pamphlets, brochures, notebooks, correspondence, telegrams, notes or taped or sound recordings of any type of conversation or meeting or conference, notes or tape or sound recordings of any type of statement of witnesses, minutes of meetings, reports, photographs, memoranda, interoffice or intraoffice communications, medical records, medical reports, chart notes, studies, analyses, results of investigations, reviews, contracts, licenses, agreements, ledgers, books of account, vouchers, bank checks and drafts, invoices, charge slips, hotel charges, receipts, bills, working papers, statistical records, costs sheets, stenographer's notebooks, desk calendars, appointment books, diaries, time sheets or logs, maps, computer input data, computer output data, computer runs, work sheets or work papers or other materials, including all such defined documents submitted to your accountants or attorneys or submitted by your accountants or attorneys to you, or papers similar to any of the foregoing.

3. The word "person" means any natural person, partnership, firm or corporation or any other type of business or legal entity, its agents, employees and representatives.

4. If any document or portion thereof, which is responsive to any request herein, is or will be withheld from production, inspection or copying, please fully identify such document or portion thereof in your response, in accordance with definition 5 below, and fully describe in your response, the reason it is or will be withheld.

5. "Identify" or "identification" means:

- (a) In each instance wherein you are asked to "identify" or describe a document, your description should include, but not be limited to, the following:
  - (1) The name, address, telephone number, occupation, job title and employer of the present custodian of the document;
  - (2) The date of the making of the document, the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence;
  - (3) The identity of author;
  - (4) The title, date, and subject matter of the document;
- (b) With respect to a verbal communication by personal means, identify means a complete statement setting forth the date, the approximate time and place, the name and address of each person present, whether any conversation was recorded and, if so, the name and address of the person who recorded it and the name and address of the person who has custody or possession of such recording, and whether any notes or memoranda were made of any conversations and, if so, the name and address of the person who made such notes or memoranda and the name and address of each person who has custody or possession of the original notes or memoranda.
- (c) With respect to a telephone conversation, "identify" means a complete statement setting forth the date, the approximate time, the name of the person initiating the call, the location from which the call was placed, the words spoken or the substance of what was said by the person initiating the call and by the person called, whether anyone else listened in on one or both sides of such

telephone conversation and, if so, the name and address of such person, whether such conversation was recorded and, if so, the name and address of the person who recorded it and the name and address of the person who has custody or possession of such recording and whether any notes or memoranda were made of such conversation and, if so, the name and address of each person who has custody or possession of the original notes or memoranda.

- (d) With respect to a document for which you claim a privilege, "Identify" means the name of the person who prepared it, the name of the person who signed it or in whose name it was issued, the name of each person to whom it was addressed or circulated, the nature and substance of the writing and its title, if any, its date, and if it bears no date, the date when it was prepared, the physical location of the original and any copies of which you are aware, the name and address of each person having custody or control of the document, and the name and number of the file, if any, in which it is contained and the basis for the privilege for which you claim.
- (e) When used in reference to a person, "Identify" means the person's full name, state of incorporation (if applicable), last known business address, last known home address (if applicable), last known business, profession, or occupation, last known job title, list of officers, directors, agents, representatives and employees (if applicable), and relationship to the answering Defendant.

6. The term "Knowledge" includes firsthand knowledge and information derived from any other source, including but not limited to hearsay knowledge.

7. The word "Occurrence," "Incident" or "Accident" refers to the alleged events that form the subject matter of this pending action, as more particularly described herein, set forth or related to Plaintiff's Complaint on file herein.

8. The word "Relate," "Relates" or "Relating" include, but are not limited to, referencing, evidencing, reflecting, embodying, showing, describing, memorializing, discussing, pertaining to, containing reference to and/or mentioning either directly and/or indirectly.

9. "Describe" or "Description" means to set forth all facts which exhaust your information, knowledge, and belief with respect to the subject matter of the discovery request.

10. Use of the singular form shall be deemed to include the plural and vice versa. Use of either the masculine or feminine pronoun, except when referring to a named Person, shall be deemed to construe either disjunctively or conjunctively so as to permit the broadest scope possible.

## **INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify, by name, address and telephone number, any Person, known to either You or Your attorney, having Knowledge of relevant facts Relating to the Occurrence, be it pertinent to damages and/or liability, stating such facts as to which any such Identified Person has Knowledge.

**INTERROGATORY NO. 2:** Please state the names, addresses and telephone numbers of all persons You intend to call as factual witnesses at the trial of this case. If any Identified Person is not also included in answer to Interrogatory No. 1, please state the general nature of the facts to which they will testify.

**INTERROGATORY NO. 3:** State the name and address of each Person(s) whom You expect to call as an expert witness at trial, specifically stating the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, the qualifications and background of such Identified expert (a produced exhibit Curriculum Vitae will be a satisfactory answer to this Interrogatory), and pursuant to Rule 705, *I.R.E.* and *I.R.C.P.* 26, set forth and disclose each and every underlying fact or data which the expert has or will rely upon in formulating and/or basing his or her opinion(s) or inference(s) thereon, as well as the opinions to be expressed and the reasons therefore.

**INTERROGATORY NO. 4:** Please identify, in full and complete detail, each and every Document, writing or other physical evidence which You intend or expect to utilize in the trial of this matter, specifying the Identity of each exhibit and what it depicts and the Person preparing such exhibit or the source of this exhibit.

**INTERROGATORY NO. 5:** Please Identify each and every statement, oral or written, (including any Document or record that in any way memorializes or Relates to a conversation), made by Yourself or any Person, agent, or representative of Yours or any other witness to the facts of the alleged Incident, other than given in discovery proceedings, which Relates to any of the issues involved in this action, including but not limited to the events of the Incident, objects or things involved in the Incident or damages alleged as a result of the Incident. As to each such statement, Identify the Person making and/or recording it, the date made, the form of the statement, the present custodian and the subject matter of the statement.

**INTERROGATORY NO. 6:** Have You entered into a release, settlement, agreement, compromise, covenant or any other type of agreement with any Person, firm or corporation as a result of the Incident referred to in Your Complaint? If so, please set forth the name and address of the Person, firm or corporation, the type of agreement or instrument by which You compromised, settled or released any claims, the date thereof, and the amount of consideration received or given for the same.

**INTERROGATORY NO. 7:** Please Identify any insurance company which has entered into an insurance agreement with Sage, its agents or employees, under which any Person carrying on an insurance business is/was liable to satisfy part or all of Plaintiff's claims, stating the policy number, coverage dates, type of policy, and applicable limits. In the alternative, and pursuant to *I.R.C.P.* 33(c), this Interrogatory may be answered by producing a copy of the applicable declaration page (if any), along with any other documentation indicating a reservation of rights under such policy, or other lack of coverage.

**INTERROGATORY NO. 8:** Name and Identify all Persons or entities who have or plan to investigate(d) the cause and circumstances of the instant allegations of the Plaintiff's Complaint.

**INTERROGATORY NO. 9:** Please Identify each and every employee who has worked for or been employed by Sage Silicon Solutions since it was organized.

**INTERROGATORY NO. 10:** Please Identify each and every company, corporation, person, or other entity to which You or Your employees provided services, whether or not payment was received for such services, since Sage Silicon Solutions was organized.

**INTERROGATORY NO. 11:** Please Identify each and every company, corporation, person, or other entity to which You or Your employees offered to provide services or with whom You or Your employees otherwise solicited or offered to form a contract, partnership, or other business relationship since Sage Silicon Solutions was organized, Identifying when such contact occurred and with whom such communications occurred.

**INTERROGATORY NO. 12:** Please Identify each and every computer program, software application, hardware device (including computers, PDA's, smart phones, tablets, or similar devices) and all related software license agreements utilized by You or Your agents and employees in providing services to third-parties other than Plaintiff, including Zilog.

**INTERROGATORY NO. 13:** Please Identify each and every project, product, or other program for which You, Your employees and agents provided services related to such project, product or other program, specifying what services were provided, to

whom, and how much compensation you were entitled to receive as a result of such services.

**INTERROGATORY NO. 14:** Please Identify each and every program for which You, Your employees and agents provided proposals related to design or design services, specifying what intellectual property and services were proposed, to whom the proposal was made, and the proposed compensation you were to receive as a result of such program.

**INTERROGATORY NO. 15:** Please Identify the Zilog product for which Sage provided services, including setting forth the name of the product and the purpose for which it is to be used.

**INTERROGATORY NO. 16:** Please Identify each and every current or former Zilog employee with which You, Your employees and agents communicated, and identify any such persons who were informed that David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, and/or Evelyn Perryman were employed by American Semiconductor.

**INTERROGATORY NO. 17:** Please state Your gross income, net income, and all payments made to You by third-parties, including when such payments were made and in what amounts, including Zilog, since Sage Silicon Solutions was organized.

#### **REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Please produce each and every abstract, white paper, proposal, request for quotation, contract, agreement, service agreement, partnership agreement, or other document tending to show a business

relationship with a third-party other than Plaintiff, including Zilog, since Sage Silicon Solutions was organized.

**REQUEST FOR PRODUCTION NO. 2.** Please produce copies or originals of all design data including, but not limited to, design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs utilized by You, Your agents and/or employees in providing services to third-parties other than Plaintiff, including Zilog.

**REQUEST FOR PRODUCTION NO. 3.** Please produce each and every letter, e-mail, fax, text message, instant message, or other document showing communications between You, Your employees and agents, and any third-party, including Zilog, since Sage Silicon Solutions was organized.

**REQUEST FOR PRODUCTION NO. 4.** Please produce each and every letter, e-mail, fax, text message, instant message, or other document showing communications between You, Your employees and agents, and Plaintiff, its employees and agents, since Sage Silicon Solutions was organized.

**REQUEST FOR PRODUCTION NO. 5.** Please produce a copy of each and every version of Your webpage, any advertising brochures or materials, or other Documents tending to show what services were offered by Sage Silicon Solutions.

**REQUEST FOR PRODUCTION NO. 6.** Please produce all statements previously made by You, Your employees or agents, the Plaintiff, Plaintiff's agents or employees, any witness or any other statement or report made by any other Person which in any way refers or Relates to the facts of the subject Incident and Plaintiff's injuries and claim for damages, other than those received in production of documents



from Plaintiff. Included in this Request is production of any statement Identified in Your Answer to Interrogatory No. 5.

**REQUEST FOR PRODUCTION NO. 7.:** Please produce each photograph, print, negative, videotape, sketch, diagram or drawing or other such similar Document in Your possession or control which in any way Relates to the subject of this Incident.

**REQUEST FOR PRODUCTION NO. 8.:** Please produce each statement, diary, note, engineering notebook, memorandum, calendar, day planner or other Document upon which are recorded the recollections, impressions or opinions of any Person, other than Your attorney, who has Knowledge of the facts of the subject Incident.

**REQUEST FOR PRODUCTION NO. 9.:** Please produce each exhibit You intend to offer into evidence or use for rebuttal or impeachment purposes, at the trial of this action. Included in this Request is production of any item Identified in Your Answer to Interrogatory No. 4.

**REQUEST FOR PRODUCTION NO. 10.:** Please produce federal income tax returns filed by You since Sage Silicon Solutions was organized.

**REQUEST FOR PRODUCTION NO. 11.:** Please produce copies of each federal and state tax form prepared by You, Your agents and/or employees, including but not limited to forms for payment of wages to employees (such as W2 forms), Form 940, and Form 941.

**REQUEST FOR PRODUCTION NO. 12.:** Please produce records of any and all payments received by You from third-parties other than Plaintiff, including Zilog, pursuant to contract or in exchange for services provided by You, Your agents or employees.

**REQUEST FOR PRODUCTION NO. 13.:** Please produce licenses or ownership records for each and every computer program, software application, hardware device utilized by You or Your agents and employees in providing services to third-parties other than Plaintiff, including Zilog.

**REQUEST FOR PRODUCTION NO. 14.:** Please produce any and all records of payments made to Your agents, employees, managers or members, whether in the form of salaries, wages, disbursements, stock dividends, or in any other form.

**REQUEST FOR PRODUCTION NO. 15.:** Please produce a curriculum vitae or any other such like or similar Document for any of the individuals identified by You in Your Answer to Interrogatory No. 3, above.

**REQUEST FOR PRODUCTION NO. 16.:** Please produce a copy of any and all reports or other such similar Documents generated, reviewed or utilized by the Persons identified in Your Answer to Interrogatory No. 3, above.

**REQUEST FOR PRODUCTION NO. 17.:** Please produce a copy of any and all insurance policies, reservation of rights letters, denials of coverage, or other documents related to any insurance policies which may apply to Plaintiff's claims, including any documents identified in the Answer to Interrogatory No. 7, above.

**REQUEST FOR PRODUCTION NO. 18.:** Please produce a copy of any and all reports or other such similar Documents and/or items of tangible evidence described, identified, referred to, reviewed or inspected by You in preparing Your Answers to Interrogatories.

## **REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1.:** Please admit that the document attached hereto as Exhibit "A" is a true and correct copy of the Certificate of Organization for Sage Silicon Solutions, LLC.

**REQUEST FOR ADMISSION NO. 2.:** Please admit that Sage Silicon Solutions, LLC, was organized on or about January 28, 2010.

**REQUEST FOR ADMISSION NO. 3.:** Please admit that the members and managers of Sage Silicon Solutions, LLC, include David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, Evelyn Perryman.

**REQUEST FOR ADMISSION NO. 4.:** Please admit that at the time Sage Silicon Solutions LLC was organized, David Roberts was employed by Plaintiff American Semiconductor.

**REQUEST FOR ADMISSION NO. 5.:** Please admit that at the time Sage Silicon Solutions LLC was organized, Gyle Yearsley was employed by Plaintiff American Semiconductor.

**REQUEST FOR ADMISSION NO. 6.:** Please admit that at the time Sage Silicon Solutions LLC was organized, Russell Lloyd was employed by Plaintiff American Semiconductor.

**REQUEST FOR ADMISSION NO. 7.:** Please admit that at the time Sage Silicon Solutions LLC was organized, William Tiffany was employed by Plaintiff American Semiconductor.

**REQUEST FOR ADMISSION NO. 8.:** Please admit that Evelyn Perryman was employed by American Semiconductor beginning on or around April 12, 2010.

**REQUEST FOR ADMISSION NO. 9.:** Please admit that at the time Evelyn Perryman was hired by American Semiconductor, she did not inform American Semiconductor that she was a manager or member of Sage Silicon Solutions, LLC.

**REQUEST FOR ADMISSION NO. 10.:** Please admit that Sage Silicon Solutions LLC provided services to Zilog.

**REQUEST FOR ADMISSION NO. 11.:** Please admit that Sage Silicon Solutions LLC provided design services to Zilog.

**REQUEST FOR ADMISSION NO. 12.:** Please admit that Sage Silicon Solutions LLC received payment in exchange for services provided to Zilog.

**REQUEST FOR ADMISSION NO. 13.:** Please admit that none of the payments made by Zilog to Sage Silicon Solutions LLC have been forwarded, sent, provided, or otherwise disbursed to Plaintiff American Semiconductor.

**REQUEST FOR ADMISSION NO. 14.:** Please admit that Sage Silicon Solutions LLC sought to provide services to other third-parties other than Plaintiff American Semiconductor and Zilog.

**REQUEST FOR ADMISSION NO. 15.:** Please admit that the document attached hereto as Exhibit "B" is a true and correct copy of portions of Sage Silicon Solutions LLC's webpage.

**REQUEST FOR ADMISSION NO. 16.:** Please admit that the document attached hereto as Exhibit "C" is a true and correct copy of portions of Plaintiff American Semiconductor's webpage.

**REQUEST FOR ADMISSION NO. 17.:** Please admit that language utilized on Sage Silicon Solutions' webpage was copied from American Semiconductor's webpage.

**REQUEST FOR ADMISSION NO. 18.:** Please admit that American Semiconductor never gave Sage Silicon Solutions permission to use on Sage Silicon Solutions' webpage the language "In cooperation with American Semiconductor Inc."

**REQUEST FOR ADMISSION NO. 19.:** Please admit that Sage Silicon Solutions' agents and/or employees utilized American Semiconductor's equipment and property, including without limitation computers, bandwidth, internet connection, etc., in providing the services Sage Silicon Solutions rendered to Zilog and/or other third parties.

**REQUEST FOR ADMISSION NO. 20.:** Please admit that Sage Silicon Solutions' agents and/or employees spent time working on projects for Zilog and/or other third parties when they were being paid to work on projects for American Semiconductor.

**REQUEST FOR ADMISSION NO. 21.:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff of the organization or existence of Sage Silicon Solutions.

**REQUEST FOR ADMISSION NO. 22.:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff that Sage Silicon Solutions was providing services to Zilog.

**REQUEST FOR ADMISSION NO. 23.:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff that Sage Silicon Solutions was receiving payments from Zilog.

**REQUEST FOR ADMISSION NO. 24.:** Please admit that Sage Silicon Solutions was operating in competition with Plaintiff.

**REQUEST FOR ADMISSION NO. 25:** Please admit that Sage Silicon Solutions sought to provide services to entities which could have obtained the same or similar services from Plaintiff.

**FURTHER INTERROGATORIES**

**INTERROGATORY NO. 18:** Please Identify each and every Person who aided in the completion of the above Answers and Responses on behalf of Sage Silicon Solutions, their position or relationship to Sage Silicon Solutions, and any other names or aliases they have used.

**INTERROGATORY NO. 19:** For each of the above Requests for Admission to which you responded with any answer but an unqualified admission, please set forth every fact which supports, identify every document which supports and identify every witness who has knowledge to support such denial or qualified admission.

DATED this 2 day of December, 2011.

ANDERSON, JULIAN & HULL LLP

By Steph C. Hull  
Brian K. Julian, Of the Firm  
Attorneys for Plaintiff

## Exhibit B

YOST & METCALF, PLLC  
Russell G. Metcalf  
ISB # 7024  
William F. Yost  
ISB # 1242  
4 Ogden Avenue  
P. O. Box 1275  
Nampa, Idaho 83653  
Telephone: (208) 466-9222  
FAX: (208) 466-1981  
Attorneys for Defendants

ORIGINAL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS, GYLE  
YEARSLEY, RUSS LLOYD, BILL TIFFANY,  
EVELYN PERRYMAN, and Defendants DOES  
I - X,

Defendants.

Case No. CV-OC-2011-23344

DEFENDANTS' RESPONSES TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES, REQUESTS  
FOR PRODUCTION AND REQUESTS  
FOR ADMISSION

COMES NOW the Defendants, David Roberts, Gyle Yearsley, Bill Tiffany and Sage Silicon Solutions, LLC, by and through their counsel of record, Russell G. Metcalf, Yost & Metcalf, PLLC, and in response to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission provide as follows:

**INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify, by name, address and telephone number, any Person, known to either You or Your attorney, having Knowledge of relevant facts Relating to DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR - 1



the Occurrence, be it pertinent to damages and/or liability, stating such facts as to which any such Identified Person has Knowledge.

**RESPONSE TO INTERROGATORY NO. 1:** Defendants identify the following:

1. David A. Roberts, c/o Yost & Metcalf, PLLC, 4 Ogden Avenue, P.O. Box 1275, Nampa, Idaho 83653. Mr. Roberts is a member of the Defendant, Sage Silicon Solutions, LLC, and was an employee of the Plaintiff, ASI, and as such, has knowledge regarding facts and circumstances related to Sage and ASI.
2. Gyle D. Yearsley, c/o Yost & Metcalf, PLLC, 4 Ogden Avenue, P.O. Box 1275, Nampa, Idaho 83653. Mr. Yearsley is a member of the Defendant, Sage Silicon Solutions, LLC, and was an employee of the Plaintiff, ASI, and as such, has knowledge regarding facts and circumstances related to Sage and ASI.
3. William Tiffany, c/o Yost & Metcalf, PLLC, 4 Ogden Avenue, P.O. Box 1275, Nampa, Idaho 83653. Mr. Tiffany is a member of the Defendant, Sage Silicon Solutions, LLC, and was an employee of the Plaintiff, ASI, and as such, has knowledge regarding facts and circumstances related to Sage and ASI.
4. Russell Lloyd, c/o Yost & Metcalf, PLLC, 4 Ogden Avenue, P.O. Box 1275, Nampa, Idaho 83653. Mr. Lloyd is a member of the Defendant, Sage Silicon Solutions, LLC, and is an employee of the Plaintiff, ASI, and as such, has knowledge regarding facts and circumstances related to Sage and ASI.
5. Evelyn Perryman, c/o Yost & Metcalf, PLLC, 4 Ogden Avenue, P.O. Box 1275, Nampa, Idaho 83653. Ms. Perryman is a member of the Defendant, Sage Silicon Solutions, LLC, and was an employee of the Plaintiff, ASI, and as such, has knowledge regarding facts and circumstances related to Sage and ASI.

6. Dale Wilson. Mr. Wilson is an employee of ASI and worked closely with the Defendants and as such has knowledge regarding the subject matter of this lawsuit.
7. Douglas Hackler. Mr. Hackler is the President and CEO of ASI and worked closely with the Defendants and as such has knowledge regarding the subject matter of this lawsuit.
8. Rich Chaney. Mr. Chaney is an employee of ASI and worked closely with the Defendants and as such has knowledge regarding the subject matter of this lawsuit.
9. David Staab, 1590 Buckeye Drive, Milpitas, CA 95035-7418, Phone: (408) 457-9000. Mr. Staab is the vice president of R&D and MCU Architecture for Zilog, Inc., a company with whom the Defendant Sage Silicon Solutions did business. Mr. Staab has knowledge of work that was performed by the Defendants for Zilog.
10. Theo Verhoeven, 1590 Buckeye Drive, Milpitas, CA 95035-7418, Phone: (408) 457-9000. Mr. Verhoeven is an employee of Zilog, Inc., and has knowledge regarding the work that was performed by the Defendants for Zilog.

As this matter is in the early stages of litigation and discovery has just commenced, Defendants will seasonably supplement their responses to this Interrogatory as and if additional persons are discovered.

**INTERROGATORY NO. 2:** Please state the names, addresses and telephone numbers of all persons You intend to call as factual witnesses at the trial of this case. If any Identified Person is not also included in answer to Interrogatory No. 1, please state the general nature of the facts to which they will testify.

**RESPONSE TO INTERROGATORY NO. 2:** Please see Defendants' Response to Interrogatory No. 1, *supra*. As this matter is in the early stages of litigation and discovery has

just commenced, Defendants will seasonably supplement their responses to this Interrogatory as and if additional persons are discovered.

**INTERROGATORY NO. 3:** State the name and address of each Person(s) whom You expect to call as an expert witness at trial, specifically stating the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, the qualifications and background of such Identified expert (a produced exhibit Curriculum Vitae will be a satisfactory answer to this Interrogatory), and pursuant to Rule 705, *I.R.E.* and *I.R.C.P.* 26, set forth and disclose each and every underlying fact or data which the expert has or will rely upon in formulating and/or basing his or her opinion(s) or inference(s) thereon, as well as the opinions to be expressed and the reasons therefore.

**RESPONSE TO INTERROGATORY NO. 3:** As this matter is in the early stages of litigation, Defendants have not yet determined whom they will call as an expert witness in this matter. Defendants will seasonably supplement their responses to this Interrogatory pursuant to the Idaho Rules of Civil Procedure and any applicable scheduling order as and if they determine to call any expert witnesses.

**INTERROGATORY NO. 4:** Please identify, in full and complete detail, each and every Document, writing or other physical evidence which You intend or expect to utilize in the trial of this matter, specifying the Identity of each exhibit and what it depicts and the Person preparing such exhibit or the source of this exhibit.

**RESPONSE TO INTERROGATORY NO. 4:** Please see all documents attached hereto as exhibits in response to Plaintiff's Requests for Production of Documents. Defendants reserve the right to use as demonstrative exhibits or to offer or attempt to offer into evidence any or all of the exhibits referred to below and produced in response to Plaintiff's Requests for

Production of Documents. Plaintiff can ascertain the information requested in this Interrogatory by reviewing the exhibits produced. Defendants also reserve the right to use any documents produced or identified by Plaintiff in response to any discovery requests served upon Plaintiff by the Defendants during the pendency of this matter.

**INTERROGATORY NO. 5:** Please Identify each and every statement, oral or written, (including any Document or record that in any way memorializes or Relates to a conversation), made by Yourself or any Person, agent, or representative of Yours or any other witness to the facts of the alleged Incident, other than given in discovery proceedings, which Relates to any of the issues involved in this action, including but not limited to the events of the Incident, objects or things involved in the Incident or damages alleged as a result of the Incident. As to each such statement, Identify the Person making and/or recording it, the date made, the form of the statement, the present custodian and the subject matter of the statement.

**RESPONSE TO INTERROGATORY NO. 5:** Defendants object to this interrogatory on the basis that it is overbroad and to the extent that it seeks information that is protected by the attorney-client privilege and or the attorney work product doctrine. Subject to and without waiving these objections, Defendants provide the following:

1. Prior to his employment with ASI, Defendant, David Roberts, had numerous conversations with Dale Wilson and/or Rich Chaney in person and by e-mail regarding various subjects related to Sage Silicon Solutions, Sage's work and Sage's website. Prior to his employment with ASI, Mr. Roberts also had discussions with Dale Wilson and/or Rich Chaney regarding the preparation of various SBIR and SAIC proposals for ASI. Prior to the employment of the Defendants by ASI, the Defendant Roberts had verbal and email discussions with Dale Wilson regarding the

ability of Sage and its members to continue to conduct business as employees of ASI and the purpose of the employment by ASI of the Defendants. True and correct copies of e-mail correspondence and other notes and/or memoranda will be provided in response to Plaintiff's Requests for Production of Documents, *infra*.

2. Prior to their employment with ASI, the Defendants Roberts, Yearsley and Tiffany (as well as Lloyd and Perryman who have not been served) executed a non-disclosure agreement (the "NDA") with ASI. True and correct copies of the NDA will be provided in response to Plaintiff's Request for Production of Documents, *infra*.
3. Prior to their employment with ASI, the Defendants met with ASI to present a test chip to be produced by Sage and the Defendants
4. Immediately prior to the commencement of Defendants' employment with ASI, Defendants, Roberts and Yearsley, met with Dale Wilson and Doug Hackler to discuss their employment by ASI.
5. Immediately prior to the commencement of Defendants' employment with ASI, Defendant Lloyd met with Dale Wilson to discuss ownership and disclosure of IP.

**INTERROGATORY NO. 6:** Have You entered into a release, settlement, agreement, compromise, covenant or any other type of agreement with any Person, firm or corporation as a result of the Incident referred to in Your Complaint? If so, please set forth the name and address of the Person, firm or corporation, the type of agreement or instrument by which You compromised, settled or released any claims, the date thereof, and the amount of consideration received or given for the same.

**RESPONSE TO INTERROGATORY NO. 6:** No.

**INTERROGATORY NO. 7:** Please Identify any insurance company which has entered into an insurance agreement with Sage, its agents or employees, under which any Person carrying on an insurance business is/was liable to satisfy part or all of Plaintiff's claims, stating the policy number, coverage dates, type of policy, and applicable limits. In the alternative, and pursuant to *I.R.C.P.* 33(c), this Interrogatory may be answered by producing a copy of the applicable declaration page (if any), along with any other documentation indicating a reservation of rights under such policy, or other lack of coverage.

**RESPONSE TO INTERROGATORY NO. 7:** Commencing April 4, 2011, through April 4, 2012, the Defendant Sage Silicon Solutions, LLC, was insured by a general commercial liability policy, Policy Number 60499-62-27, issued by Farmers Insurance Group. Defendants have been in contact with Farmers and this matter is under investigation by Farmers to determine whether there will be any coverage.

**INTERROGATORY NO. 8:** Name and Identify all Persons or entities who have or plan to investigate(d) the cause and circumstances of the instant allegations of the Plaintiff's Complaint.

**RESPONSE TO INTERROGATORY NO. 8:** Defendants object to this interrogatory to the extent that it seeks the disclosure of information that is protected from disclosure pursuant to Rule 26(b)(4)(B) of the Idaho Rules of Civil Procedure. Subject to and without waiving this objection, please see Response to Interrogatory No. 7, *supra*.

**INTERROGATORY NO. 9:** Please Identify each and every employee who has worked for or been employed by Sage Silicon Solutions since it was organized.

**RESPONSE TO INTERROGATORY NO. 9:** Sage Silicon Solutions, LLC, has never had any employees. The members of Sage Silicon Solutions, LLC, are David Roberts, William Tiffany, Gyle Yearsley, Russell Lloyd, Evelyn Perryman and Joshua Nekl.

**INTERROGATORY NO. 10:** Please Identify each and every company, corporation, person, or other entity to which You or Your employees provided services, whether or not payment was received for such services, since Sage Silicon Solutions was organized.

**RESPONSE TO INTERROGATORY NO. 10:** Other than the Plaintiff, the only company to whom the Defendants have provided services is Zilog.

**INTERROGATORY NO. 11:** Please Identify each and every company, corporation, person, or other entity to which You or Your employees offered to provide services or with whom You or Your employees otherwise solicited or offered to form a contract, partnership, or other business relationship since Sage Silicon Solutions was organized, Identifying when such contact occurred and with whom such communications occurred.

**RESPONSE TO INTERROGATORY NO. 11:** Other than the Plaintiff, the only company to whom the Defendants have provided or solicited services is Zilog. The Defendants began soliciting the opportunity to perform services for Zilog as independent contractors commencing prior to their employment with the Plaintiff. Please see e-mails produced in response to Plaintiff's Requests for Production of Documents, below.

**INTERROGATORY NO. 12:** Please Identify each and every computer program, software application, hardware device (including computers, PDA's, smart phones, tablets, or similar devices) and all related software license agreements utilized by You or Your agents and employees in providing services to third-parties other than Plaintiff, including Zilog.

**RESPONSE TO INTERROGATORY NO. 12:** As stated in Defendants Responses to Interrogatories No. 10 and 11, the only party for whom Defendants did any work, other than the Plaintiff, was Zilog, Inc. The Defendants utilized the following:

1. Juniper Network Connection Software;
2. VI or G-edit Text Editing Software for Linux;
3. Ubuntu Linux Operating System Software;
4. Firefox Web Browser Software;
5. Mozilla Thunderbird Mail Software;
6. Sage Software and Computers;
7. Personal Computers owned by Defendants Roberts, Yearsley, Lloyd, Tiffany and Perryman;
8. Open Office Software.

**INTERROGATORY NO. 13:** Please Identify each and every project, product, or other program for which You, Your employees and agents provided services related to such project, product or other program, specifying what services were provided, to whom, and how much compensation you were entitled to receive as a result of such services.

**RESPONSE TO INTERROGATORY NO. 13:** Defendants object to this interrogatory to the extent that it seeks the disclosure of information that does not belong to the Defendants and that is proprietary to Zilog. The information requested by Plaintiff is contained in the redacted documents that will be provided by Defendants to Plaintiff in response to Plaintiff's Requests for Production, below. As the redacted documents contain proprietary information that does not belong to the Defendants, but to Zilog, Defendants will disclose unredacted copies of the redacted documents upon the issuance of a properly prepared and court issued protective



order protecting and overseeing the disclosure of the requested information. Subject to and without waiving this objection, Defendants state generally that they provided verification services for various of Zilog's products and/or projects. The Defendants were independently contracted by Zilog and were paid \$65.00 per hour for the work performed for Zilog.

**INTERROGATORY NO. 14:** Please Identify each and every program for which You, Your employees and agents provided proposals related to design or design services, specifying what intellectual property and services were proposed, to whom the proposal was made, and the proposed compensation you were to receive as a result of such program.

**RESPONSE TO INTERROGATORY NO. 14:** At no time during the existence of Sage Silicon Solutions, LLC, did any of the Defendants provide proposals to any party related to design or design services or specifying what intellectual property and services were proposed. The only work that was performed by the Defendants working through Sage was the design verification work performed for Zilog, Inc. There are no other entities or parties other than ASI or Zilog with whom any of the Defendants did any business or solicited any business.

**INTERROGATORY NO. 15:** Please Identify the Zilog product for which Sage provided services, including setting forth the name of the product and the purpose for which it is to be used.

**RESPONSE TO INTERROGATORY NO. 15:** Defendants object to this interrogatory to the extent that it seeks the disclosure of information that does not belong to the Defendants and that is proprietary to Zilog. The information requested by Plaintiff is contained in the redacted documents that will be provided by Defendants to Plaintiff in response to Plaintiff's Requests for Production, below. As the redacted documents contain proprietary information that does not belong to the Defendants, but to Zilog, Defendants will disclose unredacted copies of

the redacted documents upon the issuance of a properly prepared and court issued protective order protecting and overseeing the disclosure of the requested information.

**INTERROGATORY NO. 16:** Please Identify each and every current or former Zilog employee with which You, Your employees and agents communicated, and identify any such persons who were informed that David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, and/or Evelyn Perryman were employed by American Semiconductor.

**RESPONSE TO INTERROGATORY NO. 16:** Please see Response to Interrogatory No. 1, *supra*. The Defendants do not believe that they ever informed or disclosed to Mr. Staab or Mr. Verhoeven that David Roberts, William Tiffany, Gyle Yearsley, Russell Lloyd or Evelyn Perryman were employed by ASI.

**INTERROGATORY NO. 17:** Please state Your gross income, net income, and all payments made to You by third-parties, including when such payments were made and in what amounts, including Zilog, since Sage Silicon Solutions was organized.

**RESPONSE TO INTERROGATORY NO. 17:** The only entities from whom the Defendants received any payments were ASI and Zilog. The payments received from and/or owed by Zilog are contained on the spreadsheet produced in response to Plaintiff's Requests for Production, below.

### **REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** Please produce each and every abstract, white paper, proposal, request for quotation, contract, agreement, service agreement, partnership agreement, or other document tending to show a business relationship with a third-party other than Plaintiff, including Zilog, since Sage Silicon Solutions was organized.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:** As stated in Defendant Responses to Plaintiff's Interrogatories above, the only party with whom the Defendant's did any business, other than Plaintiff, was Zilog, Inc. Attached hereto as Exhibit A, please find a redacted document titled Zilog Independent Contractor Services Agreement. As the above-produced redacted document contains proprietary information that does not belong to the Defendants, but to Zilog, Defendants will disclose unredacted copies of the above-produced redacted documents upon the issuance of a properly prepared and court issued protective order protecting and overseeing the disclosure of the requested information.

**REQUEST FOR PRODUCTION NO. 2:** Please produce copies or originals of all design data including, but not limited to, design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs utilized by You, Your agents and/or employees in providing services to third-parties other than Plaintiff, including Zilog.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** As stated in Defendant Responses to Plaintiff's Interrogatories above, the only party with whom the Defendant's did any business, other than Plaintiff, was Zilog, Inc. Please see redacted documents attached hereto as follows:

1. Exhibit B – E-mails from William Tiffany to Zilog;
2. Exhibit C – E-mails from Russell Lloyd to Zilog;
3. Exhibit D – E-mails from David Roberts to Zilog;
4. Exhibit E – E-mails from Gyle Yearsley to Zilog; and
5. Exhibit F – E-mails from Evelyn Perryman to Zilog.

As the above-produced redacted documents contain proprietary information that does not belong to the Defendants, but to Zilog, Defendants will disclose unredacted copies of the above-

produced redacted documents upon the issuance of a properly prepared and court issued protective order protecting and overseeing the disclosure of the requested information.

**REQUEST FOR PRODUCTION NO. 3:** Please produce each and every letter, e-mail, fax, text message, instant message, or other document showing communications between You, Your employees and agents, and any third-party, including Zilog, since Sage Silicon Solutions was organized.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:** Please see redacted document produced as Exhibits B through F, above.

**REQUEST FOR PRODUCTION NO. 4:** Please produce each and every letter, e-mail, fax, text message, instant message, or other document showing communications between You, Your employees and agents, and Plaintiff, its employees and agents, since Sage Silicon Solutions was organized.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:** To the extent that the Plaintiff or any of its agents were referred to or copied as recipients in any of the documents produced as Exhibits B through F, above, please refer to those documents. In addition, please see documents attached hereto as Exhibit G containing e-mails between Dale Wilson, Doug Hackler, Rich Chaney, David Roberts, William Tiffany, Gyle Yearsley, Russell Lloyd and/or Evelyn Perryman. In addition, please see emails contained in the folder titled "ASI," which folder is contained on the CD attached hereto as Exhibit I.

**REQUEST FOR PRODUCTION NO. 5:** Please produce a copy of each and every version of Your webpage, any advertising brochures or materials, or other Documents tending to show what services were offered by Sage Silicon Solutions.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:** Defendants did not, at any time, produce any advertising brochures or materials. With regard to the website, please see document attached hereto as Exhibit P.

**REQUEST FOR PRODUCTION NO. 6:** Please produce all statements previously made by You, Your employees or agents, the Plaintiff, Plaintiff's agents or employees, any witness or any other statement or report made by any other Person which in any way refers or Relates to the facts of the subject Incident and Plaintiff's injuries and claim for damages, other than those received in production of documents from Plaintiff. Included in this Request is production of any statement Identified in Your Answer to Interrogatory No. 5.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:** Please see documents attached hereto as Exhibit J containing e-mails between Defendants Roberts, Tiffany and Yearsley, Lloyd and/or Perryman. In addition, please see documents contained on the CD attached hereto as Exhibit I.

**REQUEST FOR PRODUCTION NO. 7:** Please produce each photograph, print, negative, videotape, sketch, diagram or drawing or other such similar Document in Your possession or control which in any way Relates to the subject of this Incident.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:** To the extent that they are responsive to this request, please see the documents produced herein as Exhibits A through P.

**REQUEST FOR PRODUCTION NO. 8:** Please produce each statement, diary, note, engineering notebook, memorandum, calendar, day planner or other Document upon which are recorded the recollections, impressions or opinions of any Person, other than Your attorney, who has Knowledge of the facts of the subject Incident.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:** Please see document attached hereto as Exhibit H consisting of William Tiffany's personal notes.

**REQUEST FOR PRODUCTION NO. 9:** Please produce each exhibit You intend to offer into evidence or use for rebuttal or impeachment purposes, at the trial of this action. Included in this Request is production of any item Identified in Your Answer to Interrogatory No. 4.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:** Please see documents attached hereto as Exhibits A through P. In addition, Defendants reserve the right to offer as evidence or use as rebuttal exhibits any and all documents produced by Plaintiff in response to any Interrogatories and Requests for Production of Documents that are propounded by Defendants upon Plaintiff during the course of this litigation.

**REQUEST FOR PRODUCTION NO. 10:** Please produce federal income tax returns filed by You since Sage Silicon Solutions was organized.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:** Please see documents attached hereto as Exhibit K, consisting of Defendant's, Sage Silicon Solutions, 2010 tax return.

**REQUEST FOR PRODUCTION NO. 11:** Please produce copies of each federal and state tax form prepared by You, Your agents and/or employees, including but not limited to forms for payment of wages to employees (such as W2 forms), Form 940, and Form 941.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:** Please see Response to Request for Production No. 10, above.

**REQUEST FOR PRODUCTION NO. 12:** Please produce records of any and all payments received by You from third-parties other than Plaintiff, including Zilog, pursuant to contract or in exchange for services provided by You, Your agents or employees.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:** As stated in Defendant Responses to Plaintiff's Interrogatories above, the only party with whom the Defendant's did any business, other than Plaintiff, was Zilog, Inc. Please see documents attached hereto as Exhibit L

**REQUEST FOR PRODUCTION NO. 13:** Please produce licenses or ownership records for each and every computer program, software application, hardware device utilized by You or Your agents and employees in providing services to third-parties other than Plaintiff, including Zilog.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:** None.

**REQUEST FOR PRODUCTION NO. 14:** Please produce any and all records of payments made to Your agents, employees, managers or members, whether in the form of salaries, wages, disbursements, stock dividends, or in any other form.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:** Please see Response to Request for Production No. 12, above.

**REQUEST FOR PRODUCTION NO. 15:** Please produce a curriculum vitae or any other such like or similar Document for any of the individuals identified by You in Your Answer to Interrogatory No. 3, above.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:** Please see Response to Interrogatory No. 3, above.

**REQUEST FOR PRODUCTION NO. 16:** Please produce a copy of any and all reports or other such similar Documents generated, reviewed or utilized by the Persons identified in Your Answer to Interrogatory No. 3, above.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:** Please see Response to Interrogatory No. 3, above.

**REQUEST FOR PRODUCTION NO. 17:** Please produce a copy of any and all insurance policies, reservation of rights letters, denials of coverage, or other documents related to any insurance policies which may apply to Plaintiff's claims, including any documents Identified in the Answer to Interrogatory No. 7, above.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:** Please see Insurance Policy documents attached hereto as Exhibit M.

**REQUEST FOR PRODUCTION NO. 18:** Please produce a copy of any and all reports or other such similar Documents and/or items of tangible evidence described, identified, referred to, reviewed or inspected by You in preparing Your Answers to Interrogatories.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:** Please see documents attached hereto as Exhibits A through P.

### **REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** Please admit that the document attached hereto as Exhibit "A" is a true and correct copy of the Certificate of Organization for Sage Silicon Solutions, LLC.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:** Defendants deny this request only because they do not have a copy of the exhibit referred to in the request. However, Defendants admit that the document attached hereto as Exhibit O is a true and correct copy of the Certificate of Organization that was filed with the Idaho Secretary of State on January 28, 2010.

**REQUEST FOR ADMISSION NO. 2:** Please admit that Sage Silicon Solutions, LLC, was organized on or about January 28, 2010.



**RESPONSE TO REQUEST FOR ADMISSION NO. 2:** Defendants deny this request to the extent that it implies that Sage Silicon Solutions, LLC ("Sage"), started doing business on January 28, 2010. Defendants admit that the Certificate of Organization for Sage was filed on January 28, 2010. However, for many months prior to January 28, 2010, Sage had been operating as a joint venture/informal partnership. Please see exhibits attached hereto in response to Plaintiff's Requests for Production of Documents.

**REQUEST FOR ADMISSION NO. 3:** Please admit that the members and managers of Sage Silicon Solutions, LLC, include David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, Evelyn Perryman.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:** Admit.

**REQUEST FOR ADMISSION NO. 4:** Please admit that at the time Sage Silicon Solutions LLC was organized, David Roberts was employed by Plaintiff American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:** Defendants admit only that the Certificate of Organization for Sage was officially filed after the date that Mr. Roberts commenced his employment with Plaintiff. However, as stated above, Sage had been in operation for many months prior to the commencement of Mr. Roberts' employment with Sage. In addition, Sage mailed the Certificate of Organization to be filed by the Idaho Secretary of State prior to the commencement of Mr. Roberts employment with Plaintiff.

**REQUEST FOR ADMISSION NO. 5:** Please admit that at the time Sage Silicon Solutions LLC was organized, Gyle Yearsley was employed by Plaintiff American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:** Defendants admit only that the Certificate of Organization for Sage was officially filed after the date that Mr. Yearsley commenced his employment with Plaintiff. However, as stated above, Sage had been in operation for many months prior to the commencement of Mr. Yearsley's employment with Sage. In addition, Sage mailed the Certificate of Organization to be filed by the Idaho Secretary of State prior to the commencement of Mr. Yearsley's employment with Plaintiff.

**REQUEST FOR ADMISSION NO. 6.:** Please admit that at the time Sage Silicon Solutions LLC was organized, Russell Lloyd was employed by Plaintiff American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:** Defendants admit only that the Certificate of Organization for Sage was officially filed after the date that Mr. Lloyd commenced his employment with Plaintiff. However, as stated above, Sage had been in operation for many months prior to the commencement of Mr. Lloyd's employment with Sage. In addition, Sage mailed the Certificate of Organization to be filed by the Idaho Secretary of State prior to the commencement of Mr. Lloyd's employment with Plaintiff.

**REQUEST FOR ADMISSION NO. 7.:** Please admit that at the time Sage Silicon Solutions LLC was organized, William Tiffany was employed by Plaintiff American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:** Defendants admit only that the Certificate of Organization for Sage was officially filed after the date that Mr. Tiffany commenced his employment with Plaintiff. However, as stated above, Sage had been in operation for many months prior to the commencement of Mr. Tiffany's employment with Sage.

In addition, Sage mailed the Certificate of Organization to be filed by the Idaho Secretary of State prior to the commencement of Mr. Tiffany's employment with Plaintiff.

**REQUEST FOR ADMISSION NO. 8.:** Please admit that Evelyn Perryman was employed by American Semiconductor beginning on or around April 12, 2010.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:** Admit.

**REQUEST FOR ADMISSION NO. 9.:** Please admit that at the time Evelyn Perryman was hired by American Semiconductor, she did not inform American Semiconductor that she was a manager or member of Sage Silicon Solutions, LLC.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:** Deny. At the commencement of Ms. Perryman's employment with ASI, ASI, through its agents, was explicitly and/or implicitly aware that Sage Silicon Solutions was a joint venture/informal partnership that had been doing business for many months prior to the commencement of Defendants' employment with ASI and that Evelyn Perryman was a principal member of Sage.

**REQUEST FOR ADMISSION NO. 10.:** Please admit that Sage Silicon Solutions LLC provided services to Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:** Admit

**REQUEST FOR ADMISSION NO. 11.:** Please admit that Sage Silicon Solutions LLC provided design services to Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:** Deny. The Defendants provided verification services to Zilog. As stated above, the Defendants were independently contracted by Zilog and the work that was performed for Zilog consisted of verification services.

**REQUEST FOR ADMISSION NO. 12.:** Please admit that Sage Silicon Solutions LLC received payment in exchange for services provided to Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:** Admit.

**REQUEST FOR ADMISSION NO. 13:** Please admit that none of the payments made by Zilog to Sage Silicon Solutions LLC have been forwarded, sent, provided, or otherwise disbursed to Plaintiff American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:** Admit.

**REQUEST FOR ADMISSION NO. 14:** Please admit that Sage Silicon Solutions LLC sought to provide services to other third-parties other than Plaintiff American Semiconductor and Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:** Deny.

**REQUEST FOR ADMISSION NO. 15:** Please admit that the document attached hereto as Exhibit "B" is a true and correct copy of portions of Sage Silicon Solutions LLC's webpage.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:** Defendants deny this interrogatory only because they have not been provided with a copy of Exhibit B and, therefore, they are unable to properly admit or deny that the document referred to is a correct copy of a portion of Sage's webpage.

**REQUEST FOR ADMISSION NO. 16:** Please admit that the document attached hereto as Exhibit "C" is a true and correct copy of portions of Plaintiff American Semiconductor's webpage.

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:** Defendants deny this interrogatory only because they have not been provided with a copy of Exhibit C and, therefore, they are unable to properly admit or deny that the document referred to is a correct copy of a portion of Sage's webpage.

**REQUEST FOR ADMISSION NO. 17:** Please admit that language utilized on Sage Silicon Solutions' webpage was copied from American Semiconductor's webpage.

**RESPONSE TO REQUEST FOR ADMISSION NO. 17:** Deny. At the time that Sage's webpage was created, the members/partners of Sage were not employees of Plaintiff and had been working with Plaintiff to establish a mutually beneficial business relationship between Sage and Plaintiff. In fact, Rich Chaney of ASI was instrumental in assisting with the formation of Sage's webpage. Sage did not copy Plaintiff's webpage.

**REQUEST FOR ADMISSION NO. 18:** Please admit that American Semiconductor never gave Sage Silicon Solutions permission to use on Sage Silicon Solutions' webpage the language "In cooperation with American Semiconductor Inc."

**RESPONSE TO REQUEST FOR ADMISSION NO. 18:** Deny. At the time that the webpage was created, the members of Sage were not employees of Plaintiff and had been working with Plaintiff to establish a mutually beneficial business relationship between Sage and Plaintiff. As indicated in the e-mails provided in response to Plaintiff's Requests for Production, Plaintiff had led the Defendants to believe that Plaintiff was also going to refer to Sage on its webpage as a partner and that Sage and Plaintiff were going to create a cooperative and mutually beneficial business relationship.

**REQUEST FOR ADMISSION NO. 19:** Please admit that Sage Silicon Solutions' agents and/or employees utilized American Semiconductor's equipment and property, including without limitation computers, bandwidth, internet connection, etc., in providing the services Sage Silicon Solutions rendered to Zilog and/or other third parties.

**RESPONSE TO REQUEST FOR ADMISSION NO. 19:** Deny. As stated above, the only party with whom Defendants conducted any business, other than Plaintiff, was Zilog. At

the commencement of Defendants employment with Plaintiff, Defendants discussed with Plaintiff, through its agents Dale Wilson and Doug Hackler, that Defendants intended to continue to operate Sage. In response, Plaintiff represented that it did not care what Defendants did on their own time as long as they did not use Plaintiff's equipment and resources. Accordingly, Defendants did not use any of Plaintiff's equipment or resources to provide work for Zilog. Any and all Sage work was performed by the Defendants on their own time and using their own equipment and resources, or equipment and resources that belonged to Sage.

**REQUEST FOR ADMISSION NO. 20:** Please admit that Sage Silicon Solutions' agents and/or employees spent time working on projects for Zilog and/or other third parties when they were being paid to work on projects for American Semiconductor.

**RESPONSE TO REQUEST FOR ADMISSION NO. 20:** Deny. Defendants were very particular not to perform any Sage work during the hours that they were working on Plaintiff's work projects. Any and all Sage work was performed by the Defendants on their own time and using their own equipment and resources, or equipment and resources that belonged to Sage.

**REQUEST FOR ADMISSION NO. 21:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff of the organization or existence of Sage Silicon Solutions.

**RESPONSE TO REQUEST FOR ADMISSION NO. 21:** Deny. Prior to the commencement of any of the Defendants' employment with Plaintiff, Plaintiff, by and through its agents, was aware that the Defendants were doing business as Sage. In fact, in e-mail correspondence from Dale Wilson to Defendants prior to the commencement of Defendants'

employment, Mr. Wilson recognized Sage and represented that as part of Defendants' employment, they would be able to continue to operate Sage.

**REQUEST FOR ADMISSION NO. 22.:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff that Sage Silicon Solutions was providing services to Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 22:** Admit. The Plaintiff was aware of Sage and had indicated that it did not care what Sage or its members did on their own time. Furthermore, the type of work that was being performed by Plaintiff was not the type of work that Defendants were doing for Zilog. Accordingly, Defendants did not believe they had any obligation to report the work they were doing with Zilog to Plaintiff.

**REQUEST FOR ADMISSION NO. 23.:** Please admit that Sage Silicon Solutions, its agents and employees, never informed Plaintiff that Sage Silicon Solutions was receiving payments from Zilog.

**RESPONSE TO REQUEST FOR ADMISSION NO. 23:** Admit. Please see Response to Request for Admission No. 22.

**REQUEST FOR ADMISSION NO. 24.:** Please admit that Sage Silicon Solutions was operating in competition with Plaintiff.

**RESPONSE TO REQUEST FOR ADMISSION NO. 24:** Deny. ASI is a foundry and Defendants were hired by ASI to assist ASI with two specific contracts – the SAIC and the SBIR contracts. ASI was not in the business of providing the type of services that Defendants were hired to perform for Zilog. Accordingly, there was not competition between Plaintiff and Defendants.

**REQUEST FOR ADMISSION NO. 25:** Please admit that Sage Silicon Solutions sought to provide services to entities which could have obtained the same or similar services from Plaintiff.

**RESPONSE TO REQUEST FOR ADMISSION NO. 25:** Deny. Please see Response to Request for Admission No. 24, above.

**FURTHER INTERROGATORIES**

**INTERROGATORY NO. 18:** Please Identify each and every Person who aided in the completion of the above Answers and Responses on behalf of Sage Silicon Solutions, their position or relationship to Sage Silicon Solutions, and any other names or aliases they have used.

**RESPONSE TO INTERROGATORY NO. 18:**

1. David Roberts;
2. William Tiffany;
3. Gyle Yearsley;
4. Russell Lloyd;
5. Evelyn Perryman; and
6. Russell Metcalf, attorney.

**INTERROGATORY NO. 19:** For each of the above Requests for Admission to which you responded with any answer but an unqualified admission, please set forth every fact which supports, identify every document which supports and identify every witness who has knowledge to support such denial or qualified admission.

**RESPONSE TO INTERROGATORY NO. 19:** Please see Responses to Requests for Production of Documents and the exhibits attached hereto as well as the Responses to each individual Request for Admission.

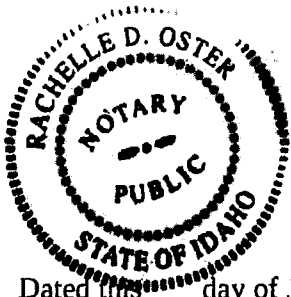
DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,  
REQUESTS FOR PRODUCTION AND REQUESTS FOR - 25



Dated this 25<sup>th</sup> day of January, 2012.

David H. Roberts  
David Roberts

Subscribed and sworn to before me this 25<sup>th</sup> day of January, 2012.



Rachelle D Oster  
Notary Public for Ada County / Idaho  
Residing at Iron Creek Union  
My commission expires: 11/17/2016

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
William Tiffany

Subscribed and sworn to before me this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Gyle Yearsley

Subscribed and sworn to before me this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
David Roberts

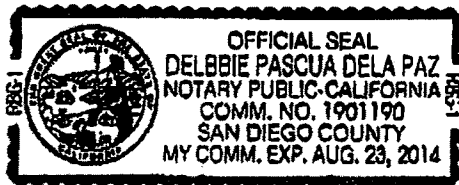
Subscribed and sworn to before me this \_\_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Dated this 26 day of January, 2012.

William J. Ziffer  
William Tiffany

Subscribed and sworn to before me this 26<sup>th</sup> day of January, 2012.



Ami  
Notary Public for \_\_\_\_\_  
Residing at SAN DIEGO, CA  
My commission expires: AUG. 23, 2014

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Gyle Yearsley

Subscribed and sworn to before me this \_\_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,  
REQUESTS FOR PRODUCTION AND REQUESTS FOR - 26

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
David Roberts

Subscribed and sworn to before me this \_\_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Dated this \_\_\_\_ day of January, 2012.

\_\_\_\_\_  
William Tiffany

Subscribed and sworn to before me this 27 day of January, 2012.



Kathryn Diane Cisneros  
Notary Public for California  
Residing at Los Angeles County  
My commission expires: July 23, 2015

Dated this 27 day of January, 2012.

Gyle Yearsley  
Gyle Yearsley

Subscribed and sworn to before me this \_\_\_\_\_ day of January, 2012.

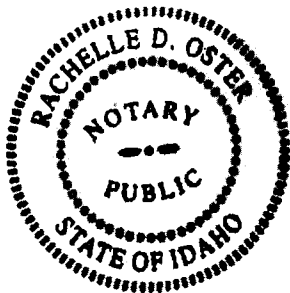
\_\_\_\_\_  
Notary Public for \_\_\_\_\_

Dated this 25<sup>th</sup> day of January, 2012.

Sage Silicon Solutions, LLC,

By: David A. Roberts  
David Roberts, member

Subscribed and sworn to before me this 25<sup>th</sup> day of January, 2012.



Rachelle D. Oster  
Notary Public for Ada County / Idaho  
Residing at Iron Credit Union  
My commission expires: 11/17/2016

YOST & METCALF, PLLC

By: \_\_\_\_\_  
Russell G. Metcalf

Dated this \_\_\_\_ day of January, 2012.

Sage Silicon Solutions, LLC,

By: \_\_\_\_\_  
David Roberts, member

Subscribed and sworn to before me this \_\_\_\_\_ day of January, 2012.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

YOST & METCALF, PLLC

By:  \_\_\_\_\_  
Russell G. Metcalf

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of January, 2012, I caused to be served by the method indicated below a true and correct copy of the foregoing document upon:

Stephen L. Adams  
Anderson, Julian & Hull, LLP  
P.O. Box 7426  
Boise, Idaho 83707

☐ U.S. Mail  
☐ Overnight Mail  
☒ Hand Delivery  
☐ Facsimile

  
\_\_\_\_\_  
Russell G. Metcalf

YOST & METCALF, PLLC  
Russell G. Metcalf  
ISB # 7024  
William F. Yost  
ISB # 1242  
4 Ogden Avenue  
P. O. Box 1275  
Nampa, Idaho 83653  
Telephone: (208) 466-9222  
FAX: (208) 466-1981  
Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho limited liability company; ZILOG, INC.,  
a Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN  
PERRYMAN, and Defendants DOES I-X,

Defendants.

Case No.: CV OC-2011-23344

**NOTICE OF SERVICE OF  
DEFENDANTS' RESPONSES TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES, REQUESTS FOR  
PRODUCTION AND REQUESTS FOR  
ADMISSION**

PLEASE TAKE NOTICE That the Defendants, by and through their attorneys of record,  
Yost & Metcalf, PLLC, and pursuant to the Idaho Rules of Civil Procedure, this 27th day of  
January, 2012, have forwarded a true and correct copy of **DEFENDANTS' NOTICE OF**

**NOTICE OF SERVICE OF DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET  
OF INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR  
ADMISSION- PAGE 1**

000392


**SERVICE OF DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF  
INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR**

**ADMISSION**, together with a copy of this Notice of Service, to American Semiconductor, Inc.,  
an Idaho Corporation, through its attorney of record, Anderson, Julian & Hull, LLP, as follows:

Anderson, Julian & Hull, LLP Brian K. Julian 250 South Fifth Street, Ste. 700 P.O. Box 7426 Boise, Idaho 83707	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Via Hand Deliver <input type="checkbox"/> Facsimile <input type="checkbox"/> Electronic
--	---

DATED this 27th day of January, 2012.

YOST & METCALF, PLLC

  
\_\_\_\_\_  
Russell G. Metcalf



# Exhibit C



960 Broadway Avenue, Suite 250  
Boise, ID 83706  
Telephone (208) 562-4900  
Facsimile (208) 562-4901

A PROFESSIONAL  
LAW CORPORATION

John N. Zarian

Direct (208) 562-4902  
JZarian@parsonsbehle.com

March 7, 2013

**VIA EMAIL & U.S. MAIL**

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229

**VIA EMAIL & U.S. MAIL**

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.*,  
Case No. CV OC 1123344

Dear Counsel:

I am writing concerning the apparent deficiencies in (i) Defendants' Amended Response to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission (the "Amended Response"), served on February 14, 2013, (ii) Defendants' Second Supplemental Response to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission (the "Supplemental Response"), also served on February 14, 2013, and (iii) the associated production of documents made by Defendants. As described in detail below, Defendants' discovery responses and document production fail to comply with Rules 26 and 34 of the Idaho Rules of Civil Procedure and require immediate supplementation. Please consider this letter our good faith attempt to meet and confer in the hopes of resolving these issues informally.

**A. ASI's Document Requests Regarding Sage's Designs**

American Semiconductor, Inc. ("ASI") has requested documents related to design data used by Sage in providing services to any third party, including Zilog, Inc. ("Zilog"). Such design data might include design documentation, test benches, schematics, code scripts, simulations, data repositories, and revision history logs.

To date, Defendants have not produced any such documents. Instead, Defendants refer to produced emails as somehow responsive to this document request.

Please confirm that Defendants have produced all (and have not withheld any) documents related to design data used by Sage in providing services to any third party, including Zilog, during the relevant time period. Also, for each request set forth in Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission, please identify responsive documents by Bates range. Requests directed to Defendants' design data include, but are not limited to, the following:

**REQUEST FOR PRODUCTION NO. 2:** Please produce copies or originals of all design data including, but not limited to, design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs utilized by You, Your agents and/or employees in providing services to third-parties other than Plaintiff, including Zilog.

**REQUEST FOR PRODUCTION NO. 7:** Please produce each photograph, print, negative, videotape, sketch, diagram or drawing or other such similar Document in Your possession or control which in any way Relates to the subject of this Incident.

#### **B. ASI's Document Requests Regarding Recorded Recollections**

Plaintiffs have requested documents upon which are recorded Defendants' recollections, impressions or opinions relating to services provided by Sage. In response to this request, Defendants have produced several pages from William Tiffany's personal notes.

Please confirm that Defendants have produced all (and has not withheld any) documents upon which are recorded Defendants' recollections, impressions or opinions relating to services provided by Sage to any third party, including Zilog. Also, for each request set forth in Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission, please identify responsive documents by Bates range. Requests directed to Defendants' recollections, impressions or opinions include, but are not limited to, the following:

**REQUEST FOR PRODUCTION NO. 8:** Please produce each statement, diary, note, engineering notebook, memorandum, calendar, day planner or other Document upon which are recorded the recollections, impressions or opinions of any Person, other than Your attorney, who has Knowledge of the facts of the subject Incident.

#### **C. ASI's Document Requests Regarding Tax Returns**

Plaintiffs have requested tax documents for Sage and its employees. In response, Defendants produced mostly blank forms and schedules. Please confirm that Defendants have produced all (and has not withheld any) documents responsive to Plaintiff's requests. Also, for each request set forth in Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission, please identify responsive documents by Bates range. Requests directed to Defendants' tax information include, but are not limited to, the following:

**REQUEST FOR PRODUCTION NO. 10:** Please produce federal income tax returns filed by You since Sage Silicon Solutions was organized.

**REQUEST FOR PRODUCTION NO. 11:** Please produce copies of each federal and state tax form prepared by You, Your agents and/or employees, including but not limited to forms for payment of wages to employees (such as W2 forms), Form 940, and Form 941.

**D. Bates Numbering of Documents Produced**

Defendants' Amended Response states that the documents produced therewith "were previously provided to counsel, however, at that time they did not include bates numbers." The response purports to explain that "Counsel is providing with bates numbers [sic] to make identifying the documents for confidential and attorney eyes only easier..."

This statement suggests that the February 14, 2013 document production is coextensive and duplicative of previous document productions. However, by our count, the February 14, 2013 production consists of 1,161 pages while the previous productions included 3,198 pages. Thus, either (i) the recent production eliminates earlier duplication and redundancy, or (ii) Defendants have yet to produce more than 2,000 pages of documents with Bates numbers and the February 14, 2013 production does not constitute a full set of responsive documents.

Please explain the foregoing discrepancy, advise as to the details of Defendants' document production(s), and supplement your document production as warranted.

**E. Completeness of Defendants' Production of Documents**

As indicated above, it appears that your February 14, 2013 production contains only documents that were previously produced – and no design data or documentation, test benches, schematics, code scripts, simulations, data repositories, or revision history logs.

This raises the question of why the parties spent months negotiating a protective order, thereby delaying the most recent production, only to have the same exact documents produced and nothing more. Defendants have consistently claimed that a heightened level of protection was necessary to ensure the secrecy of certain *product designs*. In fact, the very language of the Protective Order contemplates the production of "design documents and design files." See Protective Order at ¶ 24. Curiously, however, Defendants have failed to produce any design documents or design files whatsoever.

Did Defendants cause the parties to expend such considerable time and expense for the protection of 178 pages of non-redacted emails and contract exhibits?

In any event, please produce all design documents and design files responsive to ASI's Requests for Production and as specifically set forth in Section A of this letter.

In addition to the specific document requests referenced above, and generally, please certify that Defendants have produced all (and have not withheld any) documents responsive to each of Plaintiff's requests addressed in the Amended Response and the Supplemental Response.

**F. Improper "Confidential" and "Attorney Eyes Only" Designation**

To be sure, the most recent production included 178 pages of previously redacted documents that have now been produced without redactions. These pages are now stamped as "CONFIDENTIAL AND ATTORNEYS' EYES ONLY."

However, Defendants' designations of material as "CONFIDENTIAL AND ATTORNEYS' EYES ONLY" violate the express terms of the Protective Order. Paragraphs 2 and 3 of the Protective Order define "CONFIDENTIAL" material as "information or tangible things that qualify for protection under standards developed under I.R.C.P. 26(c), including trade secrets or confidential research, development of commercial information." Furthermore, Paragraph 23 of the Protective Order limits the designation of materials as "CONFIDENTIAL AND ATTORNEYS' EYES ONLY" to those instances in which "the designating party reasonably believes in good faith that (a) there is a substantial risk that disclosure of such Confidential Material to its competitor would result in irreparable harm or injury to the designating party, and (b) such Confidential Material constitutes a design document or design file prepared by or on behalf of the designating party."

Clearly, Defendants have misapplied the foregoing standards in their most recent production. For example, Defendants have redacted the names of individuals sending and receiving emails, the names of certain corporate entities, and other non-confidential information from the documents produced on February 14, 2013.

By this letter, we request that Defendants de-designate the unredacted documents recently produced to eliminate the designation as "CONFIDENTIAL AND ATTORNEYS' EYES ONLY." If Defendants are unwilling to do so, then we request that you confer with us, within seven (7) days of the date of this letter, to review and discuss each of the pages so designated, in an attempt to resolve this issue informally.

\* \* \* \* \*

We request that you provide a substantive response to the foregoing by the close of business on Friday, March 15, 2013.

Also, please consider this letter as part of our good faith attempt to meet and confer in anticipation of seeking a hearing regarding Plaintiff's outstanding motion to enforce.

March 7, 2013  
Page 5

Thank you for your continued courtesy and cooperation in this matter.

Sincerely,

Parsons Behle & Latimer

A handwritten signature in black ink, appearing to read "John N. Zarian", written in a cursive style.

John N. Zarian

cc: Jeffrey M. Sanchez

## Exhibit D

GARY L. COOPER\*  
\*licensed in Idaho, Utah and  
Wyoming  
REED W. LARSEN

## COOPER & LARSEN

151 NORTH 3<sup>rd</sup> AVE. - 2<sup>nd</sup> FLOOR  
P.O. BOX 4229  
POCATELLO, ID 83205-4229

RON KERL - Of Counsel

TELEPHONE (208) 235-1145  
FAX (208) 235-1182

www.cooper-larsen.com

JAVIER L. GABIOLA

---

Attorneys at Law

---

March 15, 2013

John N. Zarian  
Peter M. Midgley  
Parsons Behle & Latimer  
960 Broadway Avenue, Suite 250  
Boise, Idaho 83706

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al*

Dear John:

Thank you for your meet and confer letter dated March 7, 2013. I will try to respond to your concerns in this letter.

**A. ASI's Document Requests Regarding Sage's Designs**

First, let me assure you we have not withheld any documents. Although I did not author the discovery responses and the discovery responses were served before I became co-counsel of record in this case, I have confirmed with Gyle Yearsley, Dave Roberts and Bill Tiffany that no documents have been withheld. I should note that in the process of double checking, I am now aware of two more responsive emails that I will be producing shortly. I have not had time to look at them as the emails were just forwarded to me yesterday. That being said, I believe my clients have been consistent in their representations that they never had possession of design data as described in your letter. To the extent that they had access to such design data it was on Zilog computers and my clients were never permitted to retain copies of such design data, nor did they retain copies of such data. What has been produced are previously unredacted versions of previously redacted emails which included pieces of design data which were produced as "confidential/attorney eye's only."



John N. Zarian  
Peter M. Midgley  
March 15, 2013  
Page 2

**B. ASI's Document Requests Regarding Recorded Recollections.**

My clients have not withheld any documents responsive to Request for Production No. 8.

**C. ASI's Document Requests Regarding Tax Returns.**

My clients advise me that they interpreted Request for Production No. 10 and No. 11 as requesting only tax returns for Sage Silicon's tax returns. I suspect there might have been a definition of "You" or "Your" that may have broadened the request to include tax returns for the individuals, but I have not had a chance to go back and review it in detail. My clients are not inclined to produce their individual returns. All services were provided through Sage Silicon so production of those records will identify the source of all payments for services. I do not believe individual returns are relevant or reasonably calculated to lead to the discovery of admissible evidence and consider any such request to be in the category of "annoyance, embarrassment, oppression" under IRCP 26(c).

Having said that I invite you to convince me otherwise. If you have the tax returns of Sage Silicon why do you need the tax returns from the individuals. If there is a good faith argument that such returns are relevant, I will re-thing my position and consider yours.

**D. Bates Numbering Discrepancy.**

I am trying to get to the bottom of this. However, if you know that you previously received 3,198 pages of documents and only received 1,161 recently, you must know whether you are missing documents in the most recent production. My purpose was to make it easier for you to match previously redacted documents to their unredacted counterpart. Do you have an redacted document for which an unredacted counterpart was not produced? If you do, send me the redacted document and I will find out why an unredacted counterpart was not produced. I have my staff reviewing this and hopefully we can answer your question shortly.

**E. Completeness of Defendants' Production of Documents.**

I am not certain what your concern is in this section. When we began the process of obtaining a protective order, Brian Julian was counsel for ASI. The issue was always the redacted documents. I am attaching ASI's Motion to Compel and the Order on Motion to Compel. The issue with the encrypted documents was resolved at the hearing. I always understood that the remaining issue was with the redacted documents and I believe the Motion to Compel and Order on Motion to Compel bear that out. If you thought there were withheld documents that would meet your expectation that my clients were withholding "design documents or design files" then I can understand why you are disappointed. However, those documents are not in my clients' control or possession.

John N. Zarian  
Peter M. Midgley  
March 15, 2013  
Page 3

**F. Improper Confidential and AEO designations.**

I have never hidden the ball as to why I sought a protective order. I was concerned that if my clients produced unredacted versions of the redacted documents they produced originally, it would open them to a lawsuit from Zilog. To avoid that I worked with Zilog to determine which documents to designate as Confidential and/or AEO.

However, you also suggest that our production of unredacted documents also includes redaction of names of individuals sending emails and names of certain corporate entities. I will take another look at those issues as they may have been an oversight. To help me do that as expeditiously as possible, I would appreciate it if you could send me those pages which fall into those categories and I will get a response to you ASAP.

I appreciate you bringing these issues to my attention and I will continue to work with you to resolve these issues. Please understand, however, that my clients cannot produce what they do not have and to some degree we believe that Zilog has a say in how documents should be marked under the protective order.

Very truly yours,

  
GARY L. COOPER

GLC:vm

Enclosures (2)

12-119

000403

Brian K. Julian, ISB 2360  
Stephen L. Adams, ISB 7534  
ANDERSON, JULIAN & HULL LLP  
C. W. Moore Plaza  
250 South Fifth Street, Suite 700  
Post Office Box 7426  
Boise, Idaho 83707-7426  
Telephone: (208) 344-5800  
Facsimile: (208) 344-5510  
E-Mail: [bjulian@ajhlaw.com](mailto:bjulian@ajhlaw.com)  
[sadams@ajhlaw.com](mailto:sadams@ajhlaw.com)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I - X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,

Counterclaimants,

COPY

NO. \_\_\_\_\_  
FILED  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

MAR 26 2012

CHRISTOPHER D. RICH, Clerk  
By JAMIE RANDALL  
DEPUTY

Case No. CV OC 1123344

MOTION TO COMPEL

Vs.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

COMES NOW, the above-entitled Plaintiff, by and through its attorneys of record, Anderson Julian & Hull LLP, and pursuant to I.R.C.P. 37(a), hereby files this Motion to Compel production of unencrypted and unredacted copies of documents requested in Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission to Defendant Sage Silicon Solutions, which were served on Defendant Sage on December 18, 2011. Documents produced were either encrypted or redacted, making them indecipherable. This Motion is Supported by the Affidavit of Stephen Adams in Support of Motion to Compel, filed contemporaneously herewith.

By this Motion and as is more fully set forth in the Affidavit filed herewith, Plaintiff certifies that a good faith effort has been made to confer with Plaintiff's counsel to secure disclosure of the necessary information without court action

DATED this 26 day of March, 2012.

ANDERSON, JULIAN & HULL LLP

By JS

Brian K. Julian, Of the Firm  
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26 day of March, 2012, I served a true and correct copy of the foregoing MOTION TO COMPEL by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Russell G. Metcalf  
YOST & METCALF  
4 Ogden Avenue  
P.O. Box 1275  
Nampa, Idaho 83653  
Telephone: (208) 466-9222  
Facsimile: (208) 466-1981

☒ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile

*Attorneys for Defendants*

15  
\_\_\_\_\_  
Brian K. Julian

RECEIVED  
MAY 31 2012  
IDAHO COUNTY

ORIGINAL

Brian K. Julian, ISB 2360  
Stephen L. Adams, ISB 7534  
ANDERSON, JULIAN & HULL LLP  
C. W. Moore Plaza  
250 South Fifth Street, Suite 700  
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Attorneys for Plaintiff

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
AM. \_\_\_\_\_ P.M. 4:25

JUN 12 2012

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I - X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,

Counterclaimants,

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

ORDER RE MOTION TO COMPEL

This matter having come before the Court on hearing on May 25, 2012, and good cause appearing therefor,

IT IS ORDERED AND THIS DOES HEREBY ORDER that Plaintiff American Semiconductor, Inc.'s Motion to Compel <sup>is</sup> ~~will be~~ granted subject to ~~the imposition~~ <sup>of</sup> a Protective Order. The parties shall work to provide a Stipulated Protective Order to the Court no later than June 25, 2012. If the parties cannot agree to a Stipulated Protective Order by June 25, 2012, either or both parties may submit a proposed Protective Order to the Court, and the Court will impose a Protective Order with regard to the production of the documents at issue. ~~An award related to attorney fees for this Motion to Compel may be reserved until the conclusion of this case, and filed or awarded at that time.~~

DATED this 12<sup>th</sup> day of <sup>June</sup> ~~May~~, 2012.

J. Maville  
District Judge

# Exhibit E





960 Broadway Avenue, Suite 250  
Boise, ID 83706  
Telephone (208) 562-4900  
Facsimile (208) 562-4901

A PROFESSIONAL  
LAW CORPORATION

John N. Zarian

Direct (208) 562-4902  
JZarian@parsonsbehle.com

March 29, 2013

**VIA EMAIL & U.S. MAIL**

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229

**VIA EMAIL & U.S. MAIL**

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.*,  
Case No. CV OC 1123344

Dear Counsel:

I write in response to your letter dated March 15, 2013 which, in turn, addressed certain deficiencies in (i) Defendants' Amended Response to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission (the "Amended Response"), served on February 14, 2013, (ii) Defendants' Second Supplemental Response to Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission (the "Supplemental Response"), also served on February 14, 2013, and (iii) the associated production of documents.

I appreciate your response to my letter and your efforts to address our various concerns. Respectfully, however, there are still unexplained problems and discovery issues that require prompt attention on your clients' part. Those issues are described in detail below. Please consider this letter our continued attempt to meet and confer in the hopes of resolving these issues informally.

**A. ASI's Document Requests Regarding Sage's Designs**

American Semiconductor, Inc. ("ASI") has requested documents related to design data used by Sage in providing services to any third party, including Zilog, Inc. ("Zilog"). By your letter, your clients certify that Defendants "have not withheld any documents" relating to design data.

However, as further discussed below, there are references to attached design documents in the emails produced by defendants, which design documents have not been produced. For example, the "markups on the CPU Test Mode" (not produced) are an unmistakable reference to design data. Thus, while I appreciate your ongoing efforts to supplement your clients' document production, it appears that your client's design documents have not been produced.

Furthermore, we otherwise do not understand the explanation that your clients only had access to Zilog design data through Zilog computers, therefore implying that design data were never kept on any Sage computers. Why would Sage establish its own computer systems, if it never intended to store or work on any documents locally? Are you representing that your clients never used any Sage computers to work on Zilog projects or *any other projects* of any kind during their employment with ASI?

Under the circumstances, as part of our meet and confer, we request the following:

- Please explain why and how Sage computers were never used to work on design files during the relevant time period (if that is your contention).
- Please identify the design-related software that defendants were using during the relevant time period to work on design files, remotely or otherwise.
- Please identify the specific computers that were searched for responsive documents in connection with your clients' responses to ASI's requests.
- Please describe the methods used for searching those computers, as well as the search terms used to identify responsive emails and native data files.

#### **B. ASI's Document Requests Regarding Recorded Recollections**

ASI accepts Defendants' representation regarding their response to Request for Production No. 8, and reserves the right to seek related information as needed.

#### **C. ASI's Document Requests Regarding Tax Returns**

As you know, the definition of "You" set forth in Plaintiff's First Set of Interrogatories, Requests for Production and Requests for Admission renders ASI's Requests for Production Nos. 10 and 11 applicable to Sage Silicon Solutions, LLC ("Sage"), David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany, and Emily Perryman. Thus, we expect the production of documents to include federal and state income tax forms (e.g. W-2, 1065, 1099, K-1, 940, 941) for each of those individuals, and for Sage, during the relevant time period. These documents are relevant to the instant litigation because they may evidence payments made to, from, or among the various Defendants relating to the allegations made in the Complaint – particularly payments made to the individual Defendants for work done in violation of their respective employment agreements. Such evidence is also critical to assessing damages suffered by ASI as a result of Defendants' actions. Obviously, any concerns regarding the confidentiality of the individual defendants' personal tax returns may be addressed by designating the documents produced as CONFIDENTIAL under the Protective Order.

Of course, the tax documents referenced above are now available for 2011 and potentially for 2012. Those more recent documents are also responsive to ASI's requests and should be produced as soon as possible.

#### **D. Bates Numbering of Documents Produced**

In the March 15, 2013 letter, you advised that you were "trying to get to the bottom" of the page count discrepancy between your clients' previous document productions and the February 14, 2013 production. As you may recall, in your February 14, 2013 production, Defendants produced 1,161 pages, while the previous document productions totaled 3,198 pages.

Ostensibly, the reason for producing 1,161 pages – instead of only those pages previously redacted and now being produced in unredacted form – was to correct the prior omission of Bates numbers from the documents produced by defendants.

In view of the foregoing, either (i) the production on February 14, 2013 eliminates earlier duplication and redundancy (which, you have indicated, is not the case), or (ii) Defendants have yet to produce more than 2,000 pages of documents with any Bates numbers and the documents produced in your February 14, 2013 production do not constitute a full set of responsive documents.

Presently, we once again request that you confirm whether your February 14, 2013 production includes a full production of all documents responsive to ASI's Requests for Production, including any and all documents previously produced, *corrected* to include Bates numbers.

In addition, under the circumstances, we request that you produce a complete set of documents produced to date, with Bates numbers, to aid in identification and to avoid confusion as to the (apparently overlapping) productions of documents made by your clients in this matter.

#### **E. Completeness of Defendants' Production of Production of Documents**

You have indicated that your clients have produced all responsive documents, presumably in unredacted and unexpurgated form (now that a Protective Order is in place).

However, to be clear, the only documents we have received are email files, the Zilog Independent Contractor Services Agreements, and 40 pages of Mr. Tiffany's handwritten notes.

Furthermore, defendants' original production included a number of documents (including correspondence) in encrypted format, which documents have yet to be produced in unencrypted format. Please confirm that defendants will be producing these documents *without encryption*.

In addition, as noted above, the foregoing documents (actually produced) include many references to schematics, project files, circuit diagrams, etc. – *none which have been produced*.

Indeed, the emails produced by defendants contain many internal references to *attachments* that have not been produced. Examples of such missing attachments include, but are not limited to, the following:

- Bates No. 63: references “the latest version of the test matrix and the verification tracking spread sheet”
- Bates No. 67: references an attached “review record”
- Bates No. 73: references an attachment of “markups on the CPU Test Mode”
- Bates No. 97: references an attachment whose name has been redacted
- Bates No. 100: references an attachment of “Screenshot-2.png”
- Bates No. 113: references several attachments, including .txt, .in, .doc, and .pptx files
- Bates No. 131: references an attached “excel spreadsheed [sic] of the updated design schedule”

To date, we have not received these or any other attachments that were appended to the corresponding emails included in defendants’ production.

Accordingly, it appears that your clients have not produced all responsive documents in their possession, custody or control. Thus, we request that the foregoing deficiencies be corrected.

#### **F. Improper “Confidential” and “Attorney Eyes Only” Designation**

As explained in my previous letter, we believe defendants have misapplied the “CONFIDENTIAL” and “ATTORNEY EYES ONLY” designations by redacting information that does not qualify for protection under the terms of the Protective Order.

You have asked that we send you pages that include improper designations. Respectfully, we believe it is your responsibility to ensure Defendants’ compliance with the Protective Order.

Nevertheless, as a courtesy, I will provide a few specific examples from one page of the production. The page bearing Bates No. 29 is an email from Bill Tiffany to David Staab and Kelli Vanda regarding “DMX Slave Mode.” In the version of this document not designated as “ATTORNEY EYES ONLY,” the name of Kelli Vanda and her email address are redacted. Furthermore, the terms “DMX Slave Mode” and “Reset Sequence” are likewise redacted, as are several other terms.

Similar redactions are made throughout the first 237 pages of the February 14, 2013 production.

Please explain why the names of individuals, their email addresses, and the name of their employer qualify for “ATTORNEY EYES ONLY” designation. We do not believe that any such designation is appropriate for this type of information.

Also, please explain why only attorneys are permitted to view the terms “DMX Slave Mode” and “Reset Sequence.” (A Google search of “reset sequence” results in over 11 million hits.)

March 29, 2013  
Page 5

Are defendants representing that disclosure of the foregoing names and terms (and similar names and terms in other documents, also designated as "ATTORNEYS EYES ONLY") would somehow cause them a "substantial risk" of "irreparable harm or injury"? If so, please explain.

Defendants are obligated to produce documents in a fashion consistent with the terms of the Protective Order. Presently, ASI requests that defendants reproduce pages 1-237 from the February 14, 2013 production in a properly redacted and properly designated manner.

\* \* \* \* \*

We request that you provide a substantive response to the foregoing by the close of business on Friday, April 5, 2013.

Thank you for your continued courtesy and cooperation in this matter.

Sincerely,

Parsons Behle & Latimer



John N. Zarian

cc: Jeffrey M. Sanchez

## Exhibit F

GARY L. COOPER\*  
\*licensed in Idaho, Utah and  
Wyoming  
REED W. LARSEN

## COOPER & LARSEN

151 NORTH 3<sup>rd</sup> AVE. - 2<sup>nd</sup> FLOOR  
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POCATELLO, ID 83205-4229

RON KERL - Of Counsel

TELEPHONE (208) 235-1145  
FAX (208) 235-1182

www.cooper-larsen.com

JAVIER L. GABIOLA

---

Attorneys at Law

---

April 12, 2013

John N. Zarian  
Peter M. Midgley  
Parsons Behle & Latimer  
960 Broadway Avenue, Suite 250  
Boise, ID 83706

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al*

Dear John:

Thank you for your follow up meet and confer letter dated March 29, 2013. I will again try to address the concerns in your letter.

**A. ASI'S DOCUMENT REQUESTS REGARDING SAGE'S DESIGNS**

At the top of page two of your letter you refer to design documents that were attachments to emails which are identified at the top of page four of your letter. As you know I only represent David Roberts, Gyle Yearsley and William Tiffany in addition to Sage Silicon Solutions, LLC. I have had them review those emails to determine if they have access to the attachments. They have advised as follows:

- **Bates No. 63:** The attachment to Bates No. 63 is produced as Bates #Sage Supplemental 001 - 285.
- **Bates No. 67:** The attachment to Bates No. 67 is produced as Bates #Sage Supplemental 286.
- **Bates No. 73:** Bill Tiffany has been unable to locate the original or a copy of this email and therefore has been unable to produce the attachment. We will continue to try to locate.

- **Bates No. 97:** This was an email from Russ Lloyd to David Staab. My clients were not copied on this email so we are unable to access and produce the attachment.
- 
- **Bates No. 100:** This was an email from Russ Lloyd to David Staab. My clients were not copied on this email so we are unable to access and produce the attachment.
- **Bates No. 113:** This was an email from Russ Lloyd and my clients were not the recipients and were not copied on this email so we are unable to access and produce the attachment.
- **Bates No. 131:** The attachment to Bates No. 131 is produced as Bates #Sage Supplemental 287 - 288.
- In addition to the documents you identified, above my clients have attempted to identify additional emails which reference attachments that may or may not have been previously printed and produced:
  - Bates #Sage Supplemental 497 to 605 are emails marked AEO with attachments.
  - Bates #Sage Supplemental 606 to 762 are emails that were not marked AEO with attachments.

You question my representation and state "we otherwise do not understand the explanation that your clients only had access to Zilog design data through Zilog computers, therefore implying that design data were never kept on Sage computers." My clients David Roberts, Gyle Yearsley and William Tiffany performed the work for Zilog either directly on Zilog computers in some instances or in other instances remotely on Zilog computers via a Virtual Private Network (VPN). I liken it to when I use "LogMeIn" to work remotely on my office computer. I am using my laptop or my home computer to access my office computer and the files it has on its hard drive or office network. I am actually working on my office computer, not my laptop or home computer. When I save changes it saves the changes on the office computer, not on my laptop or home computer. It is not necessary and I do not download my office files to my laptop or home computer to do this work.

- Please explain why and how Sage computers were never used to work on design files during the relevant time period
  - Each of my clients built a computer specifically to run the Linux operating system. My clients did not have the software necessary to perform the work they did for Zilog on their computers. That is why they accessed the Zilog computers either directly or remotely to do the work.



- Please identify the design-related software that defendants were using during the relevant time period to work on design files, remotely or otherwise.
  - Please review Defendants' Responses to Plaintiff's First Set of Interrogatories and Requests for Production and Requests for Admission. Following is a supplementation to that response: Following is a summary of the software used and bold items are licenses owned by Zilog and used when working on its computers:

**Juniper network connection for Zilog VPN SW**  
**Synopsys VCS simulation and compiler**  
**Cadence Layout SW**  
**VI or G-edit text editing SW for Linux**  
**FrameMaker publishing SW**  
**Linux operating system @Zilog**

Sage software and computers  
Ubuntu Linux operating system SW  
Firefox Web Browser SW  
Mozilla Thunderbird Mail SW  
Open Source word processor, spreadsheet, and presentation SW

- Please identify the specific computers that were searched for responsive documents in connection with your clients' responses to ASI's requests:
  - The personal computers of David Roberts, Gyle Yearsley and William Tiffany which were built specifically to run the Linux operating system which are the computers used for Sage Silicon Solutions' work.
- Please describe the methods used for searching those computers, as well as the search terms used to identify responsive emails and native data files.
  - The search consisted of searching the computers for Zilog documents and searching the Sage Silicon Solutions email account for emails to and from Zilog employees.

## **B. ASI REQUESTS FOR TAX RETURNS**

Regardless how you have defined "You" I do not represent Russell Lloyd or Emily Perryman and I do not have the ability to produce their individual returns. I do represent individual defendants David Roberts, Gyle Yearsley and William Tiffany. You claim their individual returns are relevant because "they may evidence payments made to, from, or among the various Defendants relating to the

John N. Zarian  
April 12, 2013  
Page 4

allegations made in the Complaint – particularly payments made to the individual Defendants for work done in violation of their respective employment agreements.” The Amended Complaint alleges that the work that allegedly violated agreements with ASI was through Sage and my clients represent that the all non-ASI work was through Sage. Therefore, the individual returns are not relevant to any claims or defenses and are not likely to lead to the discovery of admissible evidence. Moreover, my clients believe the push to get their individual returns is for no purpose other than to harass, annoy, embarrass and otherwise wrongfully oppress them.

Attached as Bates #Sage Supplemental 471 - 496 are the 2011 and 2012 State and Federal Tax returns for Sage Silicon Solutions, LLC.

#### **C. BATES NUMBERING INCONSISTENCIES**

As I told you in my recent phone conference, I am now sorry that I ever tried to add Bates numbers to the production. My thought was that it would be easier for you to identify and compare unredacted documents if I added Bates numbers, but it has done nothing but cause confusion. I was not involved in the original production. I thought and still think that I have a complete set of what was originally produced. It does not total 3,198 pages. My assistant worked several hours with Russ Metcalf and cannot reconcile the discrepancy you claim exists. I requested in our phone call that you provide me with the 3,198 pages of documents and perhaps we can analyze the problem. I have not received those documents from you and until I do I cannot figure out any other way to resolve this problem.

#### **D. ENCRYPTED DOCUMENTS**

At a hearing before you substituted in for Brian Julian and his firm, we discussed the encrypted documents. Until then I did not know that some of the documents which had been produced were encrypted. Fortunately Dave Roberts and either Gyle Yearsley or William Tiffany were at that hearing and I thought the encryption issue was resolved during a discussion which occurred in the courtroom after the hearing concluded. I heard nothing more about it until recently and that is why I did not follow up any further. Attached as Bates #Sage Supplemental 289 - 470 are the previously encrypted documents.

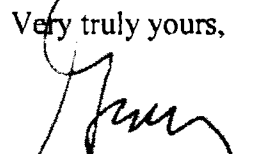
#### **E. IMPROPER DESIGNATIONS**

I have been as open and up front as I can be about how I view the designation of “Confidential” and “AEO” in this matter and that is that I am going to do everything I can to cooperate with you in discovery but not subject my clients to a second lawsuit from Zilog for producing information which it believes should be marked “AEO.” Zilog advised which documents should be

John N. Zarian  
April 12, 2013  
Page 5

marked "AEO" and we complied. I will again provide Zilog with a copy of every document we marked "AEO" and provide Zilog with your concerns. I will let you know their response as soon as possible.

Very truly yours,



GARY L. COOPER

GLC:bs

Enclosures (Bates Nos. 1 - 762)

cc: Russell Metcalf

12-119

000420

# Exhibit G



960 Broadway Avenue, Suite 250  
Boise, ID 83706  
Telephone (208) 562-4900  
Facsimile (208) 562-4901

A PROFESSIONAL  
LAW CORPORATION

**John N. Zarian**

Direct (208) 562-4902  
JZarian@parsonsbehle.com

May 3, 2013

**VIA EMAIL & U.S. MAIL**

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229

**VIA EMAIL & U.S. MAIL**

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.*,  
Case No. CV OC 1123344

Dear Counsel:

I write in response to your letter dated April 12, 2013. I appreciate your continued efforts to address our various concerns. Respectfully, however, there are still discovery issues that require prompt attention on your clients' part. Those issues are described in detail below. Please consider this letter as a further attempt to meet and confer in the hopes of resolving these issues informally.

**A. ASI's Document Requests Regarding Sage's Designs**

As you know, American Semiconductor, Inc. ("ASI") has requested documents related to the use of design data by Sage Silicon Solutions, LLC ("Sage") in providing services to any third parties, including Zilog, Inc. ("Zilog"). In your most recent productions, your clients have provided additional documents—some of which contain "design data" (as defined). We understand your letter to constitute a certification by your clients that they have not withheld any other responsive design documents.

For the avoidance of doubt, however, please confirm that defendants have searched all computers within their possession, custody or control that may contain any responsive documents. If

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so, did the search include three "personal computers"? Did it include any other "computers for Sage Silicon Solutions' work"? Frankly, we are looking for a listing of the computers actually searched.

In addition to requesting design documents that your clients utilized in their work for Zilog, ASI also requested all design documents utilized in providing services to other third parties. Such design documents should be located on Sage computers and not on Zilog servers. Accordingly, please produce all design documents contained on Sage computers regardless of their relation to Zilog.

#### **B. ASI's Document Requests Regarding Tax Returns**

We understand your position to be that "individual [tax] returns are not relevant to any claims or defenses and are not likely to lead to the discovery of admissible evidence," and that our purpose in requesting those documents is to "harass, annoy, embarrass, and otherwise wrongfully oppress" your clients. As a threshold matter, please be assured that this is not our intention.

In fact, the income your individual clients received from their work at Sage Silicon Solutions, LLC ("Sage") is directly probative of damages suffered by ASI as a result of your clients' violation of their respective employment agreements. While we understand the sensitive nature of producing personal tax returns, any such concerns are properly addressed by the Protective Order in this case.

Accordingly, please produce the individual defendants' personal tax returns (along with any associated W-2, 1065, 1099, K-1, 940, 941, or similar forms) immediately. Absent such production, we will be forced to file a motion to compel production.

#### **C. Bates Numbering Inconsistencies**

We understand that you have been unable to identify the Bates numbering discrepancies addressed in prior correspondence. We appreciate your efforts. However, in our previous letter, we requested: (1) that you confirm the February 14, 2013 production includes a complete production of all documents responsive to ASI's Requests for Production, including any and all documents previously produced, *corrected* to include Bates numbers; and, (2) that you produce a complete set of documents produced to date, with Bates numbers, to aid in identification and to avoid confusion as to the (inconsistently numbered and apparently overlapping) productions of documents made by your clients in this matter. We did not receive a response to the foregoing requests.

If you believe that your February 14, 2013 production, together with your subsequent document productions, constitute a full and complete production of all documents presently responsive to ASI's Requests for Production, then please certify that to be the case.

In any event, and particularly if you cannot make the foregoing certification, please re-produce all previously produced responsive documents under a consistent Bates numbering scheme and certify that that production constitutes a full set of responsive documents.

The foregoing will allow us to clear up the confusion and move past this issue.

**D. Improper “Confidential” and “Attorney Eyes Only” Designation**

As explained in previous correspondence, we believe defendants have misapplied the “CONFIDENTIAL” and “ATTORNEY EYES ONLY” designations by redacting information that does not qualify for protection under the terms of the Protective Order.

As you will recall, you asked that we send you pages that include improper designations. While we were under no obligation to do so, we provided you with several examples of instances in which your clients’ “CONFIDENTIAL” and “ATTORNEY EYES ONLY” designations were improper under the Protective Order. In response, you stated that “Zilog advised which documents should be marked ‘AEO’ and we complied.”

Respectfully, your deference to Zilog is unavailing. We understand that you may be trying to avoid a conflict with Zilog. However, in this context, the responsibility to produce discovery *and* comply with the terms of the Protective Order is your clients’ and yours alone.

In this regard, the Protective Order clearly sets forth which types of documents qualify for “CONFIDENTIAL” and “ATTORNEY EYES ONLY” designation. As detailed in our previous letters, you have improperly designated documents and are thus in violation of the Protective Order. Those improper designations can and should be remedied immediately.

Unfortunately, your April 12, 2013 production suffers from the same problem. For example, in that production, you designated the following documents as “CONFIDENTIAL”:

- A scholarly article titled: “Minimum Achievable Phase Noise of *RC* Oscillators”
- A scholarly article titled: “Design of a 79 dB 80 MHZ 8X-OSR Hybrid Delta-Sigma/Pipelined ADC”
- A form operating agreement for an LLC
- Sage Silicon Solutions, LLC’s Operating Agreement
- A W-9 instruction form

If you believe that these and similar documents qualify for “CONFIDENTIAL” protection under the terms of the Protective Order, please explain. We believe they do not and, accordingly, request that you correct the improper designations immediately.

In sum, defendants are obligated to produce documents in a fashion consistent with the terms of the Protective Order. For the reasons set forth here and in prior correspondence, we believe defendants have failed to satisfy these obligations.

Therefore, ASI requests that defendants reproduce pages 1-237 from the February 14, 2013 production and all of the documents from the April 12, 2013 production in a properly redacted and properly designated manner.

May 3, 2013  
Page 4

\* \* \* \* \*

We request that you provide a substantive response to the foregoing by the close of business on Friday, May 10, 2013.

Thank you for your continued courtesy and cooperation in this matter.

Sincerely,

Parsons Behle & Latimer

A handwritten signature in black ink, appearing to read "John N. Zarian", written in a cursive style.

John N. Zarian

cc: Jeffrey M. Sanchez



# Exhibit H

960 Broadway Avenue  
Suite 250  
Boise, ID 83706  
Telephone 208.562.4900  
Facsimile 208.562.4901

**PARSONS  
BEHLE &  
LATIMER**

A Professional  
Law Corporation

**John N. Zarian**  
**Attorney at Law**  
*Admitted in Idaho, Utah and California*  
Direct Dial (208) 562-4902  
E-Mail JZarian@ParsonsBehle.com

Boise • Las Vegas • Reno • Salt Lake City • Spokane • Washington, D.C.

May 20, 2013

**VIA EMAIL & U.S. MAIL**

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229

**VIA EMAIL & U.S. MAIL**

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.,*  
Case No. CV OC 1123344

Dear Counsel:

I write as part of American Semiconductors, Inc.'s ("ASI") ongoing efforts to address several outstanding discovery issues without resort to motion practice.

As you know, ASI served its first set of document requests some time ago in this action. In view of the responses thereto made by your client, Sage Silicon Solutions, LLC ("Sage"), we detailed several of ASI's concerns regarding the sufficiency of Sage's compliance. This was done in correspondence to you dated March 7, 2013. While we appreciated your attempts to address our various concerns, several issues remained, thus prompting a second comprehensive letter from us dated March 29, 2013. Once again, in spite of your efforts, a number of basic concerns remained unaddressed. This failure to meaningfully address ASI's concerns led to a third letter dated May 3, 2013, which requested substantive responses by close of business on May 10, 2013.

May 20, 2013  
Page Two

We have not received the requested response. Despite ASI's willingness to give Sage ample time in which to remedy its deficient discovery responses, the same issues documented in great detail more than two months ago persist to this date. At this point, it appears that ASI's efforts to resolve its discovery concerns informally are at an impasse.

Given the need to move this case along towards resolution on the merits, and in light of the fact that discovery is but a means towards that end, Sage has left ASI with no option but to file a motion to compel. ASI expects to do so before the end of this week.

Thank you for your continued courtesy and cooperation in this matter.

Sincerely,

Parsons Behle & Latimer

A handwritten signature in black ink, appearing to read 'John N. Zarian', with a stylized, cursive script.

John N. Zarian

cc: Kennedy K. Luvai

# Exhibit I

GARY L. COOPER\*

\*licensed in Idaho, Utah and  
Wyoming

REED W. LARSEN

JAVIER L. GABIOLA

## COOPER & LARSEN

151 NORTH 3<sup>rd</sup> AVE. - 2<sup>nd</sup> FLOOR  
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RON KERL - Of Counsel

TELEPHONE (208) 235-1145  
FAX (208) 235-1182

www.cooper-larsen.com

---

Attorneys at Law

---

May 28, 2013

John N. Zarian  
Peter M. Midgley  
Parsons Behle & Latimer  
960 Broadway Avenue, Suite 250  
Boise, ID 83706

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al*

Dear John:

Thank you for your follow up meet and confer letter dated May 3, 2013. I will again try to address the concerns in your letter.

**A. ASI'S DOCUMENT REQUESTS REGARDING SAGE'S DESIGNS**

After receiving your letter of May 3, 2013, I asked my clients to again search every computer they have to make sure they have provided every possible communication and document associated with the work they did for Zilog which is the only customer they worked for after signing employment agreements with ASI. Each has confirmed to me in writing that they have searched and produced everything they have with one exception. One of my clients looked on a personal computer that he did not even remember using on the Zilog project and found additional emails. He believes these are duplicative of emails previously produced but has not made a comparison. I am having those documents bates numbered for production in the near future, hopefully next week.

**B. ASI REQUESTS FOR TAX RETURNS**

Regarding the request for personal tax returns, my clients will not produce. My clients represent that all non-ASI work was through Sage. Therefore, the individual returns are not relevant to any claims or defenses and are not likely to lead to the discovery of admissible evidence. Moreover, my clients believe the push to get their individual returns is for no purpose other than to harass, annoy, embarrass and otherwise wrongfully oppress them.

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John N. Zarian  
May 28, 2013  
Page 2

**C. BATES NUMBERING INCONSISTENCIES**

As I told you previously, I am now sorry that I ever tried to add Bates numbers to the production. I thought and still think that I have a complete set of what was originally produced. It does not total 3,198 pages. My assistant worked several hours with Russ Metcalf and cannot reconcile the discrepancy you claim exists. I requested in our phone call that you provide me with the 3,198 pages of documents you claim to have and I will analyze the problem. I have not received those documents from you and until I do I cannot figure out any other way to resolve this problem.

Your solution that I confirm the previous production was complete and that I produce another set of documents produced to date does not really address the problem. Our original production did not total 3,198 pages. Send me the 3,198 pages and I will analyze the problem and resolve this issue.

**D. IMPROPER DESIGNATIONS**

I have previously explained who we determined the designation of "AEO." I will re-evaluate the production and determine if there is a basis to change those designations.

Very truly yours,



GARY L. COOPER

GLC:bs

cc: Russell Metcalf

12-119

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John N. Zarian  
May 28, 2013  
Page 3

bcc: Gerald Husch

Neville

John N. Zarian, ISB #7390  
Kennedy K. Luvai, #8824  
PARSONS BEHLE & LATIMER  
960 Broadway Avenue, Suite 250  
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JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com

Attorneys for plaintiff AMERICAN  
SEMICONDUCTOR, INC., an Idaho Corporation

ORIGINAL

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED 125 P.M. \_\_\_\_\_

JUL 02 2013

CHRISTOPHER D. RICH, Clerk  
By DAYSHA OSBORN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY, WILLIAM TIFFANY;  
and Defendants DOES 1-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

**SECOND AMENDED  
COMPLAINT AND DEMAND  
FOR JURY TRIAL**

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 1



Plaintiff American Semiconductor, Inc., an Idaho Corporation, by and through its attorneys of record, Parsons, Behle & Latimer, hereby claims as follows:

**PARTIES**

1. That at all times relevant hereto, American Semiconductor, Inc. (hereinafter, "American Semiconductor") was and is a Corporation incorporated in the State of Idaho, with its principal place of business in Boise, Ada County, Idaho.

2. Based on information and belief, Sage Silicon Solutions, LLC was and continues to be a limited liability company, organized on or around January 28, 2010, with its principal place of business in Meridian, Ada County, Idaho.

3. Based on information and belief, David A. Roberts was and is a private individual with his primary residence located in Meridian, Ada County, Idaho.

4. Based on information and belief, Gyle D. Yearsley was and is a private individual with his primary residence located in Boise, Ada County, Idaho.

5. Based on information and belief, William Tiffany was and is a private individual with his primary residence located in Eagle, Ada County, Idaho.

6. Based on information and belief, Russell Lloyd was and is a private individual with his primary residence located in Middleton, Canyon County, Idaho.

7. Based on information and belief, Evelyn Perryman was and is a private individual with her primary residence located in Caldwell, Canyon County, Idaho.

8. Based on information and belief, Zilog, Inc. (hereinafter, "Zilog") was and is a corporation incorporated in the state of Delaware, with its principal place of business located in Milpitas, California.

9. Based on information and belief, Zilog has offices located in Meridian, Ada County, Idaho.

10. Based on information and belief, Does I-X are persons or entities whose identities are unknown, and who may be or are responsible or liable for the damages arising out of the facts alleged below.

### **VENUE AND JURISDICTION**

11. Jurisdiction is appropriate over the claims set forth in this Second Amended Complaint pursuant to Idaho Code § 1-705 and/or pursuant to contract.

12. Personal jurisdiction is appropriate over the defendants identified in this Second Amended Complaint pursuant to Idaho Code § 5-514 and/or pursuant to contract.

13. Venue is appropriate in this Court over the claims and defendants set forth in this Second Amended Complaint pursuant to Idaho Code 5-404 and/or pursuant to contract.

14. The amount in controversy exceeds \$10,000.00.

### **GENERAL ALLEGATIONS**

15. Prior to January 28, 2010, David Roberts, William Tiffany, Gyle Yearsley, and Russell Lloyd, were employed by American Semiconductor.

16. Beginning on or around April 12, 2009, Evelyn Perryman was employed by American Semiconductor.

17. As part of their employment relationship with American Semiconductor, each of David Roberts, William Tiffany, Gyle Yearsley, Russell Lloyd, and Evelyn Perryman (referred to hereinafter collectively as the "Individuals") signed an Employee Confidentiality Agreement.

18. The Employee Confidentiality Agreement contained the following language:

2. Trade Secrets and Confidential Information.

(a) Employee acknowledges that Employer's business and future success depend on the preservation of the trade secrets and other confidential information of Employer and its suppliers and customers (the "Secrets"). The Secrets include, without limiting the generality of the foregoing, research, development, production, existing and to-be-developed or acquired source codes, flow charts, product designs, market surveys, customer lists, business and financial information, product and marketing plans, personnel information, procedural and technical manuals and practices, servicing routines, and parts lists proprietary to Employer or its customers or suppliers. Employee agrees to protect and to preserve as confidential during and after the term of his/her employment all of the Secrets at any time known to Employee or in his/her possession or control (whether wholly or partially developed by Employee or provided to Employee, and whether embodied in a tangible medium or merely remembered).

...

3. Disclosure of Inventions. Employee will promptly disclose to Employer all inventions, improvements, designs, original works of authorship, formulas, processes, software programs, databases, mask works, and trade secrets (the "Inventions") that he/she has made or conceived or created, either alone or jointly with others, during the term of his/her employment, whether or not in the course of employment and whether or not such Inventions are patentable, copyrightable or protectable as trade secrets.

4. Assignments of Inventions. Employee agrees that all Inventions that (i) are developed using equipment, supplies, facilities, or trade secrets of Employer; (2) [sic] result from work performed by Employee for Employer; or (iii) relate to Employer's business or current or anticipated research and development, will be the sole and exclusive property of Employer, and Employee hereby irrevocably assigns all rights in such Inventions to Employer. Employee will sign any assignment or other documents as requested by Employer to evidence such assignment during or after the term of his/her employment by Employer, and will otherwise assist Employer in protective it [sic] rights in such Inventions as requested by Employer.

...

7. Duty Not to Compete. Employee understands that his/her employment requires his/her undivided attention and effort during normal business hours. While employed, Employee will not, without Employer's express written consent, provide services to, or assist in any manner, any business or third party which competes with the current or planned business of Employer.

19. On or around January 28, 2010, the Individuals, acting as either members or managers, formed Sage Silicon Solutions, LLC (hereinafter referred to as "Sage").

20. The Certificate of Organization for Sage as a limited liability company was filed with the Idaho Secretary of State on or around January 28, 2010.

21. Each of the Individuals was listed on the Certificate of Organization as either as member or manager.

22. On January 28, 2010, David Roberts, William Tiffany, Gyle Yearsley, and Russell Lloyd were still employed by American Semiconductor. Each of these individuals had signed the Employee Confidentiality Agreement prior to this date.

23. On or around April 12, 2010, Evelyn Perryman signed an Employee Confidentiality Agreement, despite the fact that she was a member or manager of Sage.

24. Based on information and belief, before or after Sage was organized, a website was created for Sage. The website was freely available, and accessible by anyone with an internet connection.

25. The Sage website contained the following language:

Sage Silicon Solutions, Inc. is your complete silicon design resource from concept to fabrication. We offer silicon design services that enable you to realize your product in silicon.

26. Prior to the creation of Sage's website, American Semiconductor's website contained the following language:

American Semiconductor, Inc. is your complete silicon fabrication source from concept to fabrication. We offer a complete suite of services that enable you to realize your product in silicon.

27. The Sage website also included the following language:

Sage Silicon Solutions, Inc. is a team of ex-Zilog engineers who bring their experience in designing industry leading microcontrollers to your project. Our design background spans the complete needs for ASIC or SOC design from custom microprocessor cores and peripherals to on-chip memory and analog/mixed signal needs. In cooperation with American Semiconductor, Inc., we offer a portfolio of IP that is silicon proven.

28. At no point did American Semiconductor give the Individuals permission to start a business, limited liability company, or other corporate entity.

29. At no point did American Semiconductor give the Individuals or Sage permission to utilize language on Sage's website which is identical to the language utilized on American Semiconductor's website.

30. At no point did American Semiconductor give the Individuals or Sage permission to indicate on Sage's website that Sage was working "in cooperation with American Semiconductor Inc."

31. At no point did American Semiconductor release the Individuals from their obligations under the Employee Confidentiality Agreements, nor did American Semiconductor waive its rights under such agreement.

32. Based on information and belief, at some point after January, 2010, Sage and the Individuals began providing design and other services to entities and third-parties, other than American Semiconductor.

33. One of those third-parties to whom Sage and the Individuals provided design and other services is Zilog.

34. Based on information and belief, Zilog, and/or its employees, agents, or representatives were aware, at the time it requested services from Sage, that the Individuals were still employed by American Semiconductor.

35. American Semiconductor discovered the existence of Sage on or around September 22, 2011.

36. Prior to September 22, 2011, American Semiconductor had no knowledge that the Individuals had formed Sage, or that the Individuals and/or Sage were providing services to Zilog.

37. Based on information and belief, the Individuals utilized American Semiconductor's equipment, computers, and property in providing services to Zilog and/or other third parties.

38. Based on information and belief, the Individuals utilized American Semiconductor's equipment, computers, and property in conducting Sage's business.

39. Based on information and belief, the Individuals utilized trade secrets (as defined by the Idaho Trade Secret Act, Idaho Code § 48-801) and contractual "Secrets" and "Inventions" (as defined in the Employee Confidentiality Agreement), owned by or assigned to American Semiconductor, in providing services to Zilog and/or other third parties.

40. On or about September 22, 2011, American Semiconductor discovered the existence of Sage, and that the Individuals and Sage were providing services to Zilog.

41. Based on information and belief, Sage sent invoices to Zilog for services provided in the amount of at least \$124,181.75.

42. At no time has American Semiconductor received any compensation for the services provided by the Individuals and/or Sage to Zilog and/or other third parties.

43. At no time has American Semiconductor received from Sage, the Individuals or Zilog any assignment of design work provided to Zilog and/or other third parties.

44. On September 27, 2011, American Semiconductor terminated David Roberts', Gyle Yearsley's and William Tiffany's employment relationship with American Semiconductor.

45. Russell Lloyd and Evelyn Perryman were given the option to remain as American Semiconductor employees on the condition they resigned their positions with Sage.

46. Russell Lloyd chose to resign from Sage and retain his employment with American Semiconductor. Russell Lloyd is no longer an employee of American Semiconductor.

47. Evelyn Perryman resigned from American Semiconductor on November 1, 2011.

48. Based on information and belief, design work provided by Sage and/or the Individuals to Zilog is incorporated into Zilog's products.

49. The actions of the Individuals and Sage has hindered, impeded, and interfered with American Semiconductor's ability to offer its services in the open market, including obtaining service contracts with Zilog.

50. The Individuals had a duty to perform work for their employer American Semiconductor, instead of competing against it.

51. The actions of the Individuals and Sage has resulted in lost earnings and profits to American Semiconductor as a result the Individuals spending time, resources, and energy working on services as part of Sage, as opposed to working on projects for their employer, American Semiconductor.

52. The actions of Zilog have resulted in lost earnings and profits to American Semiconductor as a result of Zilog using American Semiconductor design resources, design knowledge and designs without approval from American Semiconductor.

53. The actions of Zilog have resulted in American Semiconductor design fixes, design knowledge and designs integrated into Zilog products without approval from American Semiconductor.

54. Based on information and belief, Zilog has not made payment of all amounts invoiced related to services provided by Sage and the Individuals.

**FIRST CAUSE OF ACTION:**

**BREACH OF CONTRACT**

**(against David Roberts, Gyle Yearsley and William Tiffany (the "Individual Defendants"))**

55. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

56. While employed by American Semiconductor, each of the Individual Defendants signed an Employee Confidentiality Agreement.

57. The Employee Confidentiality Agreement was supported by valid consideration including, without limitation, the continued at-will employment of the Individual Defendants.

58. Thus, each Employee Confidentiality Agreement was a valid contract.

59. While employed by American Semiconductor, each of the Individual Defendants was a key employee.

60. Without limitation, David Roberts was a manager at American Semiconductor with a high level of knowledge due to his exposure to American Semiconductor's technologies, trade secrets, intellectual property, business plans and procedures, customers, and other protected interests. Gyle Yearsley and William Tiffany were engineers all of whom had a high level of

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 9



knowledge due to their exposure to American Semiconductor's technologies, trade secrets, intellectual property, methods of operation, and other protected interests.

61. Each of these employees had the ability to harm or threaten American Semiconductor's legitimate business interests.

62. Pursuant to the Employee Confidentiality Agreement, each Individual Defendant agreed to not compete against American Semiconductor.

63. Pursuant to the Employee Confidentiality Agreement, each Individual Defendant agreed to assign any "Inventions" related "to Employer's business or current or anticipated research and development."

64. Each of the Individual Defendants breached the Employee Confidentiality Agreement.

65. Without limitation, each Individual Defendant competed against American Semiconductor by forming Sage and providing services to a third party.

66. Further, each Individual Defendant failed to assign any and all "Inventions," which included any design work or other similar work provided to Zilog or other third parties.

67. American Semiconductor has been damaged by the Individual Defendant's conduct, and the Individual Defendant's breach is the proximate and direct cause of American Semiconductor's injury.

68. The Individual Defendants' conduct was willful, wanton, malicious, grossly negligent and/or outrageous. It was an extreme deviation from the standards of reasonable conduct, and was done with knowledge of its likely effect on American Semiconductor.

**SECOND CAUSE OF ACTION:**

**BREACH OF FIDUCIARY DUTY/ DUTY OF LOYALTY  
(against the Individual Defendants)**

69. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

70. As employees, key employees and managers employed by American Semiconductor, the Individual Defendants owed American Semiconductor a fiduciary duty and/or a duty of loyalty.

71. Based on the Individual Defendants' actions in forming Sage, a business entity which competed with American Semiconductor, it is apparent that while still employed by American Semiconductor, the Individual Defendants knowingly and actively competed with their employer, including soliciting and providing services to American Semiconductor's potential client Zilog, and soliciting services to American Semiconductor's other potential clients.

72. Further, the Individual Defendants received payments from Zilog for services provided, which should have been directed and/or assigned to American Semiconductor.

73. By engaging in such disloyal conduct, the Individual Defendants breached their duties owed to American Semiconductor.

74. American Semiconductor has been damaged by this breach of duty, and the Individual Defendant's breach is the direct and proximate cause of American Semiconductor's injuries.

**THIRD CAUSE OF ACTION:**

**BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING  
(against the Individual Defendants and Sage)**

75. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

76. Under Idaho law, every contract is deemed to have an implied covenant of good faith and fair dealing.

77. Pursuant to the implied covenant of good faith and fair dealing, a party to a contract is not permitted to nullify or significantly impair the benefits that the other party reasonably expects to receive under the contract.

78. The conduct of the Individual Defendants and Sage deprived American Semiconductor of the benefits it reasonably expected to receive under the Employee Confidentiality Agreement, including any amounts paid by Zilog or "Inventions" which were to be assigned to American Semiconductor.

79. American Semiconductor has been damaged by this breach, and the breach is the direct and proximate cause of American Semiconductor's injuries.

**FOURTH CAUSE OF ACTION:**

**TORTIOUS INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE AND CONTRACT  
(against the Individual Defendants and Sage)**

80. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

81. The Individual Defendants and Sage were aware of the existence of the Employee Confidentiality Agreements between the Individuals and American Semiconductor.

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 12

82. The Individual Defendants and Sage were aware that American Semiconductor and Sage would be seeking to provide similar or identical services to third parties, including Zilog.

83. By forming Sage and providing services to third-parties, such as Zilog, the Individual Defendants tortiously interfered with American Semiconductor's prospective economic advantage, including depriving American Semiconductor of the opportunity to seek to provide services to Zilog.

84. Further, the Individual Defendants and Sage tortiously interfered with the Employee Confidentiality Agreement by seeking to provide services to third parties.

85. The Individual Defendants and Sage were aware that American Semiconductor had, in the past, sought to provide services to Zilog, and would, in the future, continue to seek to provide services to Zilog and other third-parties.

86. American Semiconductor has been damaged by the foregoing conduct, and damages were directly and proximately caused by the Individual Defendants' and Sage's tortious interference.

**FIFTH CAUSE OF ACTION:**

**TORTIOUS INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE AND CONTRACT  
(against Zilog)**

87. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

88. Zilog was aware of the existence of the Employee Confidentiality Agreements between the Individuals and American Semiconductor.

89. Zilog tortiously interfered with the Employee Confidentiality Agreements by soliciting or accepting design services from the Individuals in violation of the Individuals' SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 13

respective contractual obligations to American Semiconductor under the Employee Confidentiality Agreements.

90. In addition, by soliciting or accepting services from the Individuals and Sage, Zilog tortiously interfered with American Semiconductor's prospective economic advantage, including depriving American Semiconductor of the opportunities to earn income from the Individuals' design services.

91. Zilog was aware that American Semiconductor had, in the past, sought to provide services to third parties, and would, in the future, continue to seek to provide such services.

92. In addition, Zilog was necessarily aware that its solicitation or acceptance of the services of the Individuals and Sage would, and did, interfere with American Semiconductor's provision of services to third parties.

93. American Semiconductor has been damaged by the foregoing conduct, and damages were directly and proximately caused by Zilog's tortious interference.

#### **SIXTH CAUSE OF ACTION:**

##### **IDAHO TRADE SECRET ACT VIOLATION, I.C. § 48-801, et seq. (against the individual Defendants, Sage and Zilog)**

94. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

95. Based on information and belief, the Individual Defendants, as employees of American Semiconductor, obtained American Semiconductor's trade secrets and/or other protectable interests and business model for design services as a result of their employment.

96. Based on information and belief, such trade secrets and/or other protectable interests were utilized in providing services to Zilog, in violation of the Idaho Trade Secret Act.

97. Based on information and belief, Zilog obtained such trade secrets and/or other protectable interests inherent in the design services rendered by the Individuals and in violation of the Idaho Trade Secret Act.

98. Such violations of the Idaho Trade Secret Act resulted in damages to American Semiconductor, or a benefit to the Individual Defendants, Sage and Zilog, in the amount of at least \$124,181.75. American Semiconductor seeks recovery of such damages in an amount to be proven at trial, disgorgement of the benefit received by the Individual Defendants, Sage and Zilog, and/or a reasonable royalty for the unauthorized use of American Semiconductor's trade secrets and/or other protectable interests.

99. Due to the Individual Defendants', Sage's and Zilog's malicious and willful conduct, American Semiconductor seeks exemplary damages not to exceed twice the amount awarded pursuant to the Idaho Trade Secret Act.

**SEVENTH CAUSE OF ACTION:**

**IMPROPER APPROPRIATION OF AMERICAN SEMICONDUCTOR'S NAME  
(against the Individual Defendants and Sage)**

100. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

101. By falsely stating on Sage's website that it was working "in cooperation with American Semiconductor, Inc.," the Individual Defendants and Sage improperly appropriated American Semiconductor's name for their own benefit.

102. Such action resulted in damages to American Semiconductor, including lost potential for obtaining service contracts with Zilog in the amount of at least \$124,181.75.

**EIGHTH CAUSE OF ACTION:**  
**UNJUST ENRICHMENT**  
**(against the Individual Defendants, Sage and Zilog)**

103. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

104. The Individual Defendants have received a benefit from American Semiconductor, in the form of salary payments and benefits while the Individual Defendants formed and operated Sage.

105. The Individual Defendants accepted and appreciated this benefit.

106. It would be inequitable for the Individual Defendants to retain the benefit of salary payments and benefits while the Individual Defendants operated a business in direct competition with American Semiconductor.

107. Further, both the Individual Defendants and Sage received a benefit from utilizing American Semiconductor's trade secrets, in the form of payment for services from Zilog for such services.

108. The Individual Defendants and Sage received and appreciated such benefits.

109. It would be inequitable for the Individual Defendants and Sage to retain such benefit where such benefit was received in direct violation of the Employee Confidentiality Agreement, fiduciary duties and duties of loyalty, and Idaho statute.

110. In addition, Zilog has received a benefit in the form of ASI's trade secrets and other protectable interest as a direct result of its solicitation and/or acceptance of services from the Individuals and Sage.

111. It would be inequitable for Zilog to retain such benefits when such benefits were received without American Semiconductor's consent and/or a result of Zilog's interference with American Semiconductor's prospective economic advantage and contract.

112. The Individual Defendants, Sage and Zilog should be disgorged of the benefits that they have received.

113. American Semiconductor is entitled to recoup such disgorgement, as the Individual Defendants, Sage and Zilog received such benefit to American Semiconductor's detriment.

#### **NINTH CAUSE OF ACTION:**

##### **CONSUMER PROTECTION ACT VIOLATION (against the Individual Defendants and Sage)**

114. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

115. Sage and the Individual Defendants included and incorporated American Semiconductor's name into Sage's website.

116. Sage and the Individual Defendants further indicated that they worked "in cooperation with American Semiconductor, Inc."

117. American Semiconductor did not work in cooperation with Sage, nor did it ever give permission for its name to be used in Sage's website.

118. Such acts did or would cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of Sage and the Individual Defendants' services, in violation of the Idaho Consumer Protection Act.



119. American Semiconductor has been damaged by this conduct, and requests all relief allowed under the Idaho Consumer Protection Act, including statutory damages and injunctive relief.

**TENTH CAUSE OF ACTION:**

**DECLARATORY RELIEF  
(against the Individual Defendants, Sage, and Zilog)**

120. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

121. Pursuant to Idaho Code 10-1201, courts have the power to declare the rights, status, and other legal relations between parties.

122. A contract existed between the Individual Defendants and American Semiconductor whereby all "Inventions" created by the individual Defendants during the term of their employment are assigned to American Semiconductor.

123. Based on information and belief, "Inventions," including design work created or prepared by the individual Defendants are included in Zilog's products.

124. Based on information and belief, the Individual Defendants and/or Sage provided design and other services to Zilog pursuant to contract.

125. American Semiconductor is legally entitled to an assignment of rights in all "Inventions" incorporated into Zilog products which were prepared or created by the Individual Defendants and/or Sage.

126. Further, pursuant to the Idaho Trade Secrets Act, American Semiconductor may be entitled to a reasonable royalty for all "Inventions" incorporated into Zilog products, as such "Inventions" include trade secrets or other protectable interests owned by American Semiconductor.

**ELEVENTH CAUSE OF ACTION:**

**INJUNCTIVE RELIEF  
(against the Individual Defendants, Sage, and Zilog)**

127. American Semiconductor realleges and hereby incorporates the allegations made in the foregoing paragraphs as if set forth herein in full.

128. Based on information and belief the Individual Defendants and Sage continue to operate and provide services or advertisements for services to third parties.

129. Based on information and belief, Zilog continues to use products which incorporate "Inventions" and trade secrets belonging to American Semiconductor.

130. American Semiconductor seeks both preliminary and permanent injunctive relief preventing the Individual Defendants and Sage to continue from operating or providing services or advertisements for services to third-parties which is in contravention of the Employee Confidentiality Agreement.

131. American Semiconductor seeks both preliminary and permanent injunctive relief preventing the Individual Defendants, Sage, and Zilog from utilizing or disclosing American Semiconductor's "Inventions" or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such "Inventions" or trade secrets.

**RESERVATION OF RIGHTS AND NOTICE PLEADING**

132. As this is a notice pleading jurisdiction, American Semiconductor hereby give notice of the intent to include in this Second Amended Complaint and to pursue any and all claims and causes of action which could justifiably be inferred based on the facts alleged and the specific causes of action pled.

133. American Semiconductor reserve the right to amend this Second Amended Complaint to specifically include and identify any claims or causes of action which may be

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 19

discovered through the course of discovery, including but not limited to federal copyright violations and federal and state trademark violations.

### **PRAYER FOR RELIEF**

WHEREFORE, American Semiconductor prays for relief as follows:

- a. For damages, statutory damages, treble damages, in an amount to be proven at trial, but which exceeds \$10,000. Such damages include, but are not limited to, lost profits due to lost design capacity, costs of recruitment, hiring and training for replacement of terminated employees, lost income related to competition from Sage, loss of employee time while the Individuals were performing work for Sage instead of for American Semiconductor, etc.
- b. Disgorgement of any improperly received benefits, such as payments for services from Zilog, employee salaries and benefits, etc.
- c. Preliminary and permanent injunctive relief preventing the Individual Defendants and Sage to continue from operating or providing services or advertisements for services to third-parties which is in contravention of the Employee Confidentiality Agreement.
- d. Preliminary and permanent injunctive relief preventing the Individual Defendants, Sage, and Zilog from utilizing or disclosing American Semiconductor's "Inventions" or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such "Inventions" or trade secrets.
- e. Declaratory relief determining the relationship between American Semiconductor, the Individual Defendants, Sage, and Zilog, with respect to the Employee Confidentiality Agreement, and American Semiconductor's right to the "Inventions" and trade secrets utilized during the services provided to Zilog.
- f. Imposition of a constructive trust on all payments owed by Zilog or other third parties to Sage, which remain unpaid, for the benefit of American Semiconductor.
- g. For any and all attorney fees and costs allowed, including pursuant to Idaho Code §§ 12-120, 12-121, 48-608, and otherwise as allowed by law.
- h. For an award of prejudgment interest, as allowed pursuant to Idaho Code § 28-22-104 or any other applicable code or rule.
- i. [Reserved]
- j. For any such other and further relief as this Court deems just and proper under the circumstances.

**AMERICAN SEMICONDUCTOR DEMANDS TRIAL BY JURY AS TO ALL ISSUES**

DATED: June 28, 2013.

PARSONS BEHLE & LATIMER

By Kennedy K. Luvai  
Kennedy K. Luvai  
Attorneys for plaintiff AMERICAN  
SEMICONDUCTOR, INC., an Idaho  
Corporation

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of July, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany


☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: gary@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany

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Gerald T. Husch  
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Attorneys for Defendant Zilog, Inc.

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\_\_\_\_\_  
Kennedy K. Luvai

neville/sa net  
8/6/13 JH

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STEPHEN R. THOMAS, ISB No. 2326  
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gth@moffatt.com  
srt@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals,

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**NOTICE OF APPEARANCE**

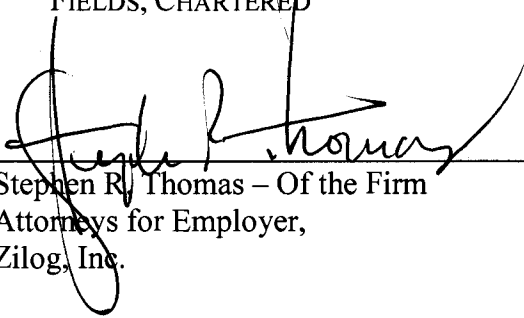
NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 922  
**AUG 05 2013**  
**CHRISTOPHER D. RICH, Clerk**  
By **CHRISTINE SWEET**  
DEPUTY

Please take notice that Gerald T. Husch and Stephen R. Thomas hereby appear as counsel of record for defendant Zilog, Inc. in the above-entitled action and requests that all documents and pleadings filed herein be duly and regularly served upon said attorney at MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED, 101 South Capitol Blvd, 10th Floor, Post Office Box 829, Boise, Idaho 83701-0829.

The above-named defendant hereby specifically reserves all defenses as to lack of jurisdiction over the subject matter, lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, failure to join an indispensable party and any other defense available to said defendant.

DATED this 5th day of August, 2013.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Stephen R. Thomas – Of the Firm  
Attorneys for Employer,  
Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 2013, I caused a true and correct copy of the foregoing **NOTICE OF APPEARANCE** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

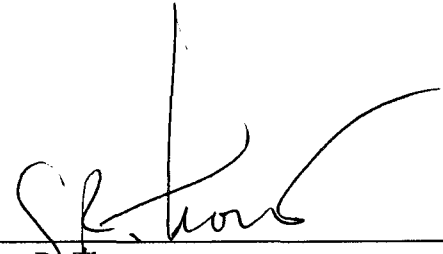
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
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Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Facsimile (208) 337-4854  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
960 Broadway Ave., Suite 250  
Boise, ID 83706  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

  
\_\_\_\_\_  
Stephen R. Thomas



11/11/12

NO. 113  
A.M. FILED P.M.

Gerald T. Husch, ISB No. 2548  
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25332.0000

AUG 07 2013

CHRISTOPHER D. RICH, Clerk  
By ELYSHIA HOLMES  
DEPUTY

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

Case No. CV OC 1123344

**ZILOG, INC.'S ANSWER TO  
PLAINTIFF'S SECOND AMENDED  
COMPLAINT**

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

COMES NOW the Defendant Zilog, Inc. ("Defendant" or "Zilog"), by and through its undersigned counsel, and without admitting any liability or damages to Plaintiff and without assuming the burden of proof as to any issue in this litigation, answers Plaintiff's Second Amended Complaint ("Second Amended Complaint"), as follows:

### **FIRST DEFENSE**

Plaintiff's Second Amended Complaint fails to state a claim upon which relief can be granted.

### **SECOND DEFENSE**

Defendant denies each and every allegation contained in Plaintiff's Second Amended Complaint that is not expressly and specifically admitted herein and, in response to the numbered paragraphs of Plaintiff's Second Amended Complaint, admits, denies and otherwise alleges as follows:

### **PARTIES**

1. Defendant admits the allegations of paragraph 1 of Plaintiff's Second Amended Complaint.

2. Defendant admits that Sage Silicon Solutions, LLC was and continues to be a limited liability company, organized on or about January 28, 2010. Defendant lacks information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2 of Plaintiff's Second Amended Complaint and therefore denies the same.

3. Based on information and belief, Defendant admits that David A. Roberts was and is a private individual. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

4. Based on information and belief, Defendant admits that Gyle D. Yearsley was and is a private individual. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

5. Based on information and belief, Defendant admits that William Tiffany was and is a private individual. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

6. Based on information and belief, Defendant admits that Russell Lloyd was and is a private individual. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

7. Based on information and belief, Defendant admits that Evelyn Perryman was and is a private individual. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

8. Defendant admits the allegations of paragraph 8 of Plaintiff's Second Amended Complaint.

9. Defendant admits the allegations of paragraph 9 of Plaintiff's Second Amended Complaint.

10. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

#### VENUE AND JURISDICTION

11. Defendant admits the allegations of paragraph 11 of Plaintiff's Second Amended Complaint.

12. Defendant admits the allegations of paragraph 12 of Plaintiff's Second Amended Complaint.

13. Defendant admits the allegations of paragraph 13 of Plaintiff's Second Amended Complaint.

14. Defendant admits the allegations of paragraph 14 of Plaintiff's Second Amended Complaint.

#### GENERAL ALLEGATIONS

15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

16. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

18. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

19. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

20. Defendant admits the allegations of paragraph 20 of Plaintiff's Second Amended Complaint.

21. Defendant admits the allegations of paragraph 21 of Plaintiff's Second Amended Complaint.

22. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

23. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

24. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

25. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

26. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

27. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

28. Defendant denies the allegations of paragraph 28 of Plaintiff's Second Amended Complaint.

29. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

30. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

31. Defendant denies the allegations of paragraph 31 of Plaintiff's Second Amended Complaint.

32. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of Plaintiff's Second Amended Complaint and therefore denies those allegations, except that Defendant admits Sage began to provide services to Defendant at some point after January 2010.

33. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33 of Plaintiff's Second Amended Complaint and therefore denies those allegations, except that Defendant admits Sage began to provide services to Defendant at some point after January 2010.

34. Defendant denies the allegations of paragraph 34 of Plaintiff's Second Amended Complaint.

35. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

36. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

37. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

38. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

39. Defendant denies the allegations of paragraph 39 of Plaintiff's Second Amended Complaint.

40. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

41. Defendant admits that it received invoices from Sage totaling approximately \$115,000, but denies the balance of the allegations of paragraph 41 of Plaintiff's Second Amended Complaint.

42. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

43. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

44. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

45. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

46. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

47. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 of Plaintiff's Second Amended Complaint and therefore denies those allegations.



48. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

49. Defendant denies the allegations of paragraph 49 of Plaintiff's Second Amended Complaint.

50. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

51. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

52. Defendant denies the allegations of paragraph 52 of Plaintiff's Second Amended Complaint.

53. Defendant denies the allegations of paragraph 53 of Plaintiff's Second Amended Complaint.

54. Defendant admits the allegations of paragraph 54 of Plaintiff's Second Amended Complaint.

**FIRST CAUSE OF ACTION:  
BREACH OF CONTRACT  
(against David Roberts, Gyle Yearsley and William Tiffany (the "Individual Defendants"))**

55. In response to the allegations of paragraph 55 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

56. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

57. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

58. Defendant denies the allegations of paragraph 58 of Plaintiff's Second Amended Complaint.

59. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 59 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

60. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

61. Defendant denies the allegations of paragraph 61 of Plaintiff's Second Amended Complaint.

62. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 62 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

63. Defendant denies the allegations of paragraph 63 of Plaintiff's Second Amended Complaint.

64. Defendant denies the allegations of paragraph 64 of Plaintiff's Second Amended Complaint.

65. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

66. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

67. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

68. Defendant denies the allegations of paragraph 68 of Plaintiff's Second Amended Complaint.

**SECOND CAUSE OF ACTION:  
BREACH OF FIDUCIARY DUTY/DUTY OF LOYALTY  
(against the Individual Defendants)**

69. In response to the allegations of paragraph 69 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

70. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 70 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

71. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

72. Defendant denies the allegations of paragraph 72 of Plaintiff's Second Amended Complaint.

73. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 73 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

74. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 74 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

**THIRD CAUSE OF ACTION:  
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING  
(against the Individual Defendants and Sage)**

75. In response to the allegations of paragraph 69 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

76. Defendant admits the allegations of paragraph 76 of Plaintiff's Second Amended Complaint.

77. Defendant admits the allegations of paragraph 77 of Plaintiff's Second Amended Complaint.

78. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 78 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

79. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 79 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

**FOURTH CAUSE OF ACTION:  
TORTIOUS INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE AND CONTRACT  
(against the Individual Defendants and Sage)**

80. In response to the allegations of paragraph 80 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

81. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 81 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

82. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 82 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

83. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

84. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 84 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

85. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 85 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

86. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 86 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

**FIFTH CAUSE OF ACTION:  
TORTIOUS INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE AND CONTRACT  
(against Zilog)**

87. In response to the allegations of paragraph 87 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

88. Defendant denies the allegations of paragraph 88 of Plaintiff's Second Amended Complaint.

89. Defendant denies the allegations of paragraph 89 of Plaintiff's Second Amended Complaint.

90. Defendant denies the allegations of paragraph 90 of Plaintiff's Second Amended Complaint.

91. Defendant denies the allegations of paragraph 91 of Plaintiff's Second Amended Complaint.

92. Defendant denies the allegations of paragraph 92 of Plaintiff's Second Amended Complaint.

93. Defendant denies the allegations of paragraph 93 of Plaintiff's Second Amended Complaint.

**SIXTH CAUSE OF ACTION:  
IDAHO TRADE SECRET ACT VIOLATION, I.C. § 48-801, et seq.  
(against the Individual Defendants, Sage and Zilog)**

94. In response to the allegations of paragraph 94 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

95. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 95 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

96. Defendant denies the allegations of paragraph 96 of Plaintiff's Second Amended Complaint.

97. Defendant denies the allegations of paragraph 97 of Plaintiff's Second Amended Complaint.

98. Defendant denies the allegations of paragraph 98 of Plaintiff's Second Amended Complaint.

99. Defendant admits that Plaintiff is seeking exemplary damages not to exceed twice the amount awarded pursuant to the Idaho Trade Secrets Act but denies the remaining allegations of paragraph 98 of Plaintiff's Second Amended Complaint

**SEVENTH CAUSE OF ACTION:  
IMPROPER APPROPRIATION OF AMERICAN SEMICONDUCTOR'S NAME  
(against the Individual Defendants and Sage)**

100. In response to the allegations of paragraph 100 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

101. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 101 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

102. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 102 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

**EIGHTH CAUSE OF ACTION:  
UNJUST ENRICHMENT  
(against the Individual Defendants, Sage and Zilog)**

103. In response to the allegations of paragraph 103 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

104. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 104 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

105. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 105 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

106. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 106 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

107. Defendant denies the allegations of paragraph 107 of Plaintiff's Second Amended Complaint.

108. Defendant denies the allegations of paragraph 108 of Plaintiff's Second Amended Complaint.

109. Defendant denies the allegations of paragraph 109 of Plaintiff's Second Amended Complaint.

110. Defendant denies the allegations of paragraph 110 of Plaintiff's Second Amended Complaint.



111. Defendant denies the allegations of paragraph 111 of Plaintiff's Second Amended Complaint.

112. Defendant denies the allegations of paragraph 112 of Plaintiff's Second Amended Complaint.

113. Defendant denies the allegations of paragraph 113 of Plaintiff's Second Amended Complaint.

**NINTH CAUSE OF ACTION:  
CONSUMER PROTECTION ACT VIOLATION  
(against the Individual Defendants and Sage)**

114. In response to the allegations of paragraph 114 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

115. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph \_ of Plaintiff's Second Amended Complaint and therefore denies those allegations.

116. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 116 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

117. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 117 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

118. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 118 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

119. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 119 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

**TENTH CAUSE OF ACTION:  
DECLARATORY RELIEF  
(against the Individual Defendants, Sage and Zilog)**

120. In response to the allegations of paragraph 120 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

121. Defendant admits the allegations of paragraph 121 of Plaintiff's Second Amended Complaint.

122. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 122 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

123. Defendant denies the allegations of paragraph 123 of Plaintiff's Second Amended Complaint.

124. Defendant admits that Sage provided services to Zilog pursuant to contract but denies the remainder of the allegations of paragraph 124 of Plaintiff's Second Amended Complaint.

125. Defendant denies the allegations of paragraph 125 of Plaintiff's Second Amended Complaint.

126. Defendant denies the allegations of paragraph 126 of Plaintiff's Second Amended Complaint.

**ELEVENTH CAUSE OF ACTION:  
INJUNCTIVE RELIEF  
(against the Individual Defendants, Sage and Zilog)**

127. In response to the allegations of paragraph 127 of Plaintiff's Second Amended Complaint, Defendant incorporates the allegations contained in the above paragraphs as if fully set forth herein.

128. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 128 of Plaintiff's Second Amended Complaint and therefore denies those allegations.

129. Defendant denies the allegations of paragraph 129 of Plaintiff's Second Amended Complaint.

130. The allegations of paragraph 130 of Plaintiff's Second Amended Complaint are not directed at Defendant and require no response from Defendant.

131. Defendant admits the allegations of paragraph 131 of Plaintiff's Second Amended Complaint.

**RESERVATION OF RIGHTS AND NOTICE PLEADING**

132. Defendant admits that Idaho is a notice pleading jurisdiction, but denies that the notice allegedly given in paragraph 132 of Plaintiff's Second Amended Complaint is sufficient to add any other alleged causes of action.

133. Defendant denies the allegations of paragraph 133 of Plaintiff's Second Amended Complaint.

**THIRD DEFENSE**

Plaintiff's claims against Defendant are barred by the doctrines of estoppel, equitable estoppel and/or quasi estoppel.

#### **FOURTH DEFENSE**

Plaintiff's claims against Defendants are barred by the doctrine of laches.

#### **FIFTH DEFENSE**

Plaintiff's claims against Defendants are barred by the doctrine of waiver.

#### **SIXTH DEFENSE**

Plaintiff's claims against Defendants are barred by the doctrine of unclean hands.

#### **SEVENTH DEFENSE**

Plaintiff's claims against Defendant are barred by the doctrine of ratification whereby the Plaintiff, by and through its principals and/or agents, ratified the conduct of the other Defendants in this action.

#### **EIGHTH DEFENSE**

Plaintiff's tort claims are precluded by application of the economic loss doctrine which bars tort claims to recover strictly economic loss.

#### **PRAYER FOR RELIEF**

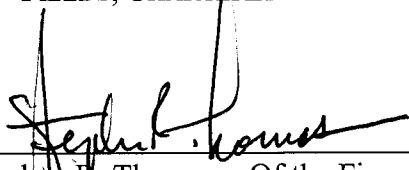
WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff's Second Amended Complaint be dismissed and Plaintiff take nothing thereby;
2. For Defendant's costs and attorney's fees incurred in defending the Second Amended Complaint; and
3. For such other and further relief as the Court deems just and proper.

DATED this 6th day of August, 2013.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By

A handwritten signature in black ink, appearing to read "Stephen R. Thomas", written over a horizontal line.

Stephen R. Thomas – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of August, 2013, I caused a true and correct copy of the foregoing **ZILOG, INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

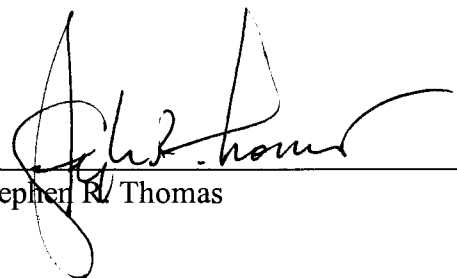
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Facsimile (208) 337-4854  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
960 Broadway Ave., Suite 250  
Boise, ID 83706  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
\_\_\_\_\_  
Stephen R. Thomas



Pursuant to Rule 37(b) of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") hereby respectfully moves for an order compelling defendant Zilog, Inc. ("Zilog") to respond to ASI's discovery requests comprising its first set of requests for production served on July 12, 2013. ASI seeks an order compelling Zilog to produce all responsive records (inclusive of any that may have been otherwise subject to a privilege or immunity) in light of Zilog's waiver of all of its objections as a result of its failure to serve objections within the response window. In addition, under the circumstances, ASI requests that its reasonable fees and costs incurred in bringing this motion be reimbursed by Zilog from whom discovery remains due and outstanding. The basis for this motion is more fully set forth in ASI's supporting Memorandum and the accompanying Declaration of John N. Zarian, both of which are filed concurrently herewith.

DATED this 30th day of August, 2013.

PARSONS BEHLE & LATIMER

By   
\_\_\_\_\_  
John N. Zarian  
Kennedy K. Luvai  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30th day of August, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany

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Gerald T. Husch  
Stephen R. Thomas  
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& FIELDS, CHTD.  
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Attorneys for Defendant Zilog, Inc.

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srt@moffatt.com



Kennedy K. Luvai

4845-4838-8885.1

NO. 1020 FILED  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_  
**ORIGINAL**  
AUG 30 2013  
CHRISTOPHER D. FICH, Clerk  
By ANNAMARIE MEYER  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
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KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
corporation; ZILOG, INC., a Delaware corporation;  
DAVID ROBERTS; GYLE YEARSLEY; RUSSELL  
LLOYD; WILLIAM TIFFANY; EVELYN  
PERRYMAN; and Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S  
MOTION TO COMPEL AGAINST  
DEFENDANT ZILOG, INC.**

**MEMORANDUM IN SUPPORT OF PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S MOTION TO COMPEL AGAINST DEFENDANT  
ZILOG, INC.**

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Pursuant to Rule 37(b) of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") respectfully submits the following memorandum in support of its Motion to Compel against Defendant Zilog, Inc.

### **INTRODUCTION**

Defendant Zilog, Inc. ("Zilog") has had *nearly six months* to comply with ASI's discovery requests seeking disclosure of information relevant to this action. Like co-defendants Sage Silicon Solutions, LLC ("Sage"), David Roberts, Gyle Yearsley and William Tiffany, Zilog has likewise shirked its discovery obligations in this case. Indeed, like its co-defendants, Zilog has, through its failure to meaningfully respond to discovery requests, forced ASI to file the instant motion to compel in order to mitigate and address the mounting prejudice occasioned by Zilog's repeated failures to comply.

By this motion, ASI seeks an order directing Zilog to produce all records responsive to ASI's document requests given that Zilog failed to object to any of the document requests and has thus waived all objections that could have been asserted. Because Zilog's failure to produce records is complete and unjustified, ASI is also entitled to its reasonable attorneys' fees and costs in bringing this motion.

### **BACKGROUND**

#### **A. OVERVIEW OF LAWSUIT**

In its Second Amended Complaint, ASI asserts that various individuals, who were at various times ASI employees, formed Sage Silicon Solutions, LLC ("Sage") behind ASI's back and in violation of their respective confidentiality agreements with ASI. As alleged in the Second Amended Complaint, Sage and the individual defendants began offering design and

other services to companies, including Zilog, all the while making unauthorized uses of ASI equipment and other assets.

ASI did not receive any compensation from Sage, the named individual defendants or Zilog for such services. As further alleged, the actions of Zilog and its co-defendants have impeded or interfered with ASI's ability to offer its own services in the open market, resulting in lost earnings and profits to ASI's detriment. Specifically, the Second Amended Complaint alleges that Zilog's actions have resulted in lost earnings and profits to ASI as a result of Zilog's unauthorized use or acceptance of ASI's design resources, design know how and actual designs by virtue of its dealings with its co-defendants in this case.

Based on the foregoing, ASI asserted a number of claims in this lawsuit against Zilog, namely, (a) tortious interference with economic advantage and contract, (b) misappropriation of trade secrets, and (c) unjust enrichment. In addition, ASI sought declaratory relief and injunctive relief Zilog.

**B. ZILOG'S REPEATED DISREGARD OF DISCOVERY ITS OBLIGATIONS AND ASI'S EFFORTS TO INFORMALLY RESOLVE THIS DISPUTE**

While Zilog was named as a defendant at the outset of this action, ASI held off on formally serving the Amended Complaint and summons pending further investigation and discovery from the other defendants in this action. [Zarian Decl., ¶ 4]. Zilog's co-defendants, however, produced only a limited number of documents and their responses to ASI's discovery requests are now part of motion to compel that is pending before the Court. [Zarian Decl., ¶ 5]. As part of that investigation, ASI served a subpoena duces tecum on Zilog on March 8, 2013 seeking production of various records pertinent to ASI's claims in this lawsuit (the "Subpoena"). [Zarian Decl., ¶ 6, Ex. A].

Zilog refused to comply and did not produce *any* records. . [Zarian Decl., ¶ 7]. Instead Zilog raised a number of “concerns” by letter from its counsel on March 25, 2013. [Zarian Decl., ¶ 7, Ex. B]. Of particular import here, Zilog did not assert any objection premised on a privilege or other immunity that would have permitted it to withhold responsive records. [*Id.*].

Immediately thereafter, on March 29, 2013, counsel for ASI addressed the “concerns” raised by Zilog in a point-by-point response. [Zarian Decl., ¶ 8, Ex. C]. ASI also requested that Zilog supplement its responses by producing records responsive to the Subpena on or before April 5, 2013. [*Id.*]. In spite of that ASI’s detailed response demonstrating that the “concerns” were not well taken, Zilog failed to produce any responsive records. [*Id.*].

As of May 20, 2013 Zilog had apparently taken no action geared towards compliance with its obligations to fully respond to the Subpoena. [See Zarian Decl., ¶ 9, Ex. D]. In a good faith attempt at informally resolving this dispute precipitated by Zilog’s disregard of the Subpoena, ASI sought a confirmation from Zilog of the status of requested supplementation on May 20, 2013. [*Id.*]. ASI requested that the status confirmation be made by close of business the following day, on May 21, 2013. [*Id.*]. Zilog refused to provide the status confirmation as requested and did not produce any records. [See Zarian Decl., ¶ 9].

On July 12, 2012, ten days after ASI served Zilog with the summons and Amended Complaint, ASI served Zilog with its first set of requests for production (“Requests for Production”). [Zarian Decl., ¶ 11, Ex. E]. The document requests in the Requests for Production were identical to those in the Subpoena. [Compare Zarian Decl., Ex. A with Zarian Decl., Ex. E]. Based on the date and manner of service, Zilog’s response to the Requests for Production was due no later than *August 12, 2013*. [Zarian Decl., ¶ 12].

Zilog refused to comply with the Requests for Production. Indeed, as of August 15, 2013, counsel for ASI had yet to receive any responses or objections to the Requests for Production. [Zarian Decl., ¶ 13]. As a means of seeking to resolve this impasse occasioned by Zilog's refusals to comply, first, with the Subpoena and, subsequently, with the Requests for Production, ASI requested that Zilog immediately produce all responsive records no later than August 22, 2013. [Zarian Decl., ¶ 14, Ex. F].

Counsel for Zilog responded in an e-mail sent on August 19, 2013. [Zarian Decl., ¶ 16, Ex. G]. In the e-mail, counsel indicated that Zilog's responses to the Requests for Production had been drafted but not yet served and that he would immediately contact Zilog concerning the Requests for Production. [*Id.*]. As of the filing of this motion on August 30, 2012, ASI had yet to receive any responses from Zilog. [Zarian Decl., ¶ 17]. This motion follows.

### **LEGAL STANDARD**

Rule 26 of the Idaho Rules of Civil Procedure provides that a party "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." I.R.C.P. 26(b)(1).

Further, Rule 37 provides that " . . . if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request."

I.R.C.P. 37(a)(1). For purposes of Rule 37(a), "an evasive or incomplete answer is to be treated as a failure to answer." I.R.C.P. 37(a)(4).

### **ARGUMENT**

#### **A. ZILOG'S REFUSALS TO PRODUCE RECORDS ARE UNJUSTIFIABLE; THUS, AN ORDER COMPELLING DISCOVERY IS WARRANTED**

Zilog's pattern of conduct in repeatedly refusing to comply with duly served discovery requests, including the Requests for Production, is contrary to the purposes of discovery in civil cases which are geared towards broad disclosure of relevant or potentially relevant information. Indeed, the Idaho Supreme Court has observed that "[t]he purpose of our discovery rules is to facilitate fair and expedient pretrial fact gathering. It follows, therefore, that discovery rules are not intended to encourage or reward those whose conduct is inconsistent with that purpose." *Edmunds v. Kraner*, 142 Idaho 867, 873, 136 P.3d 338, 344 (2006). Zilog's repeated refusals to comply with the Requests for Production are willful and unjustified for a number of reasons including those set forth below.

*First*, Zilog failed to serve objections or otherwise respond to the Requests for Production within the response window and, in fact, had not done so as of the filing of this motion. Therefore, Zilog has waived all of its objections (including those premised on privilege) and is now obligated to produce all responsive records. Zilog's resort to the "concerns" previously raised with regard to the Subpoena is unavailing.

*Second*, the requests set forth in the Requests for Production are all calculated to lead to the discovery of admissible evidence in this action. Thus, to the extent that the Court is inclined to entertain a plea by Zilog to read in the "concerns" raised with regard to the Subpoena as also applying to the Requests for Production, those "concerns" are uniformly hyper-technical and are

merely intended to frustrate discovery in this case. Notably, Zilog has failed to produce any records subject to the "concerns" raised there being no assertion of privilege or immunity.

*Third*, to the extent that some of Zilog's "concerns" are influenced, in whole or in part, by concerns regarding the confidentiality of Zilog or third party information, such concerns have already been anticipated and addressed in the Protective Order that is in force here.

In light of the foregoing, it is clear that Zilog's refusals to comply with ASI's discovery requests are indefensible and, thus, an order compelling Zilog to comply is warranted.

**B. AN AWARD OF ATTORNEYS' FEES AND COSTS IS WARRANTED**

Zilog's failure to respond or otherwise object to the Requests for Production as compounded by its serial refusals to produce responsive records despite ample opportunities and entreaties to do so entitles ASI to its reasonable attorneys' fees and costs under Rule 37(a)(4) of the Idaho Rules of Civil Procedure. Accordingly, ASI requests that the Court award it its reasonable attorneys' fees and costs incurred in bringing this motion.

**CONCLUSION**

For the foregoing reasons, the Court should compel Zilog to produce all records responsive to the Requests for Production.

DATED this 30th day of August, 2013.

PARSONS BEHLE & LATIMER

By Kennedy K. Luvai

John N. Zarian

Kennedy K. Luvai

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30th day of August, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany

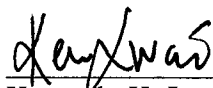
<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: gary@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany

<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: rmetcalf@cableone.net

Gerald T. Husch  
Stephen R. Thomas  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O.. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
Attorneys for Defendant Zilog, Inc.

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input checked="" type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: gth@moffatt.com srt@moffat.com

  
\_\_\_\_\_  
Kennedy K. Luvai

ORIGINAL  
NO. 1020  
A.M. FILED P.M.

AUG 30 2013

CHRISTOPHER D. RICH, Clerk  
By ANNAMARIE MEYER  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
PARSONS BEHLE & LATIMER  
960 South Broadway Avenue, Suite 250  
Boise, ID 83706  
Telephone: (208) 562-4900  
Facsimile: (208) 562-4901  
Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
corporation; ZILOG, INC., a Delaware corporation;  
DAVID ROBERTS; GYLE YEARSLEY;  
WILLIAM TIFFANY; and Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**DECLARATION OF JOHN N.  
ZARIAN IN SUPPORT OF  
PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S MOTION  
TO COMPEL AGAINST  
DEFENDANT ZILOG, INC.**

**DECLARATION OF JOHN N. ZARIAN IN SUPPORT OF PLAINTIFF  
AMERICAN SEMICONDUCTOR, INC.'S MOTION TO COMPEL AGAINST  
DEFENDANT ZILOG, INC.**

4839-1105-1285.2

PAGE 1

000491

I, John N. Zarian, declare as follows:

1. I am duly licensed to practice law in Idaho and before this Court, and I am a shareholder with the law firm of Parsons Behle & Latimer. I am counsel of record for plaintiff American Semiconductor, Inc. ("ASI") in the above-referenced action. I make this declaration based upon my own personal knowledge and, if called upon, could and would testify competently and truthfully as to the factual matters contained herein.

2. I submit this declaration in support of ASI's Motion to Compel against Defendant Zilog, Inc. ("Zilog"), filed concurrently herewith.

3. In this action, ASI contends that Zilog solicited or accepted design services from the named individual defendants and/or defendant Sage Silicon Solutions, LLC ("Sage") and that, in doing so, defendants tortuously interfered with ASI's prospective business prospects, misappropriated ASI's trade secrets, and were unjustly enriched at ASI's expense.

4. Zilog was named as a defendant in ASI's original complaint filed December 2, 2011. However, ASI deferred service of the summons and complaint pending further investigation and discovery from the other defendants named in this action.

5. The defendants other than Zilog have served only a limited number of documents in response to the discovery requests served by ASI, and have been the subject of several discovery motions. A motion to compel from the other defendants is currently pending.

6. On March 8, 2013, nearly six months ago, ASI served a document subpoena on Zilog. Attached hereto **Exhibit A** is a true and correct copy of the Subpoena Duces Tecum to Zilog, Inc. (the "Subpoena").

7. On March 25, 2013, counsel for Zilog sent a letter in response to the Subpoena.

Attached as **Exhibit B** is a true and correct copy of Mr. Gerry Husch's March 25, 2013 letter.  
**DECLARATION OF JOHN N. ZARIAN IN SUPPORT OF PLAINTIFF**  
**AMERICAN SEMICONDUCTOR, INC.'S MOTION TO COMPEL AGAINST**  
**DEFENDANT ZILOG, INC.**

4839-1105-1285.2

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000492

Zilog's counsel volunteered certain "concerns" but did not assert any privilege or immunity in response to the Subpoena. Nevertheless, Zilog refused to produce *any* records.

8. On March 29, 2013, I wrote to Zilog's counsel and demanded substantive responses to the Subpoena by April 5, 2013. Attached as **Exhibit C** is a true and correct copy of my letter to Mr. Husch. I did not receive any supplemental responses or any documents.

9. On May 20, 2013, I once again wrote to Zilog's counsel and requested that Zilog confirm the status of any supplemental responses by the close of business the following day. Attached hereto as **Exhibit D** is a true and correct copy of my May 20, 2013 letter to Mr. Husch. I did not receive any supplemental responses or any documents.

10. On May 30, 2013, ASI served its Amended Complaint and summons on Zilog in this action. Subsequently, on July 2, 2013, ASI filed and served its Second Amended Complaint. Zilog filed its answer to the Second Amended Complaint on July 2, 2013.

11. On July 12, 2013, ASI served its first set of requests for production on defendant Zilog (the "Requests for Production"). Attached hereto as **Exhibit E** is a true and correct copy of the Requests for Production. Significantly, the Requests for Production tracked the document requests incorporated into the Subpoena and served on March 8, 2013.

12. The Requests for Production were hand-served on Mr. Husch's office; accordingly, Zilog's responses were due no later than *August 12, 2013*.

13. As of August 15, 2013, however, my office had not received any responses to the Requests for Production, and no documents had been produced by Zilog.

14. Accordingly, on August 15, 2013, I wrote Mr. Husch a letter drawing attention to Zilog's continued failure to honor its discovery obligations. Attached hereto as **Exhibit F** is a true and correct copy of my August 15, 2013 letter to Mr. Husch.

15. As indicated in my letter, Zilog has been on notice for more than five months of the records sought by ASI in this matter. On behalf of ASI, I demanded that Zilog immediately produce all responsive records but, in any event, no later than August 22, 2013.

16. On Monday, August 19, 2013, I received an email from Mr. Husch responding to my letter of August 15, 2013. Attached as **Exhibit G** is a true and copy of Mr. Husch's August 19, 2013 e-mail. Mr. Husch indicated that Zilog's responses to the Requests for Production had been drafted but not yet served. Mr. Husch advised that he would immediately contact Zilog concerning ASI's Requests for Production.

17. As of the filing of this motion on August 30, 2013, ASI has not received any responses to the Requests for Production and Zilog has not produced a single document requested by ASI in the Requests for Production or the Subpoena.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Executed on this 30th day of August, 2013, at Boise, Idaho.

  
\_\_\_\_\_  
John N. Zarian

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of August, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: gary@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: rmetcalf@cableone.net

Gerald T. Husch  
Stephen R. Thomas  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O.. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
Attorneys for Defendant Zilog, Inc.

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: gth@moffatt.com  
srt@moffatt.com

  
Kennedy K. Luvai

# Exhibit A

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
PARSONS BEHLE & LATIMER  
960 South Broadway Avenue, Suite 250  
Boise, ID 83706  
Telephone: (208) 562-4900  
Facsimile: (208) 562-4901  
Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS, GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

---

RELATED COUNTER ACTIONS

---

Case No. CV OC 1123344

**SUBPOENA DUCES TECUM TO  
ZILOG, INC.**

*The Honorable Thomas F. Neville*



**THE STATE OF IDAHO TO:      ZILOG, INC.**  
**c/o C.T. Corporation Systems, Registered Agent**  
**921 S. Orchard Street, Suite G**  
**Boise, Idaho 83705**

**YOU ARE HEREBY COMMANDED:**

☐ to appear in the Court at the place, date and time specified below to testify in the above case.

☐ to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

☒ to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below.

☐ to permit inspection of the following premises at the date and time specified below.

**PLACE, DATE AND TIME:**      Parsons Behle & Latimer  
960 Broadway Avenue, Suite 250  
Boise, Idaho 83706

5:00 p.m., April 9, 2013

**DEFINITIONS:**

1.      "DOCUMENT" means every writing or record of whatever type and description in the possession, custody or control of the Zilog, Inc. ("ZILOG") (including all writings and records that have been transferred from ZILOG to its accountants, attorneys, or consultants), however made, and includes all handwritten, typed, printed, recorded, transcribed, taped, filmed, graphic- or sound-reproduction material, magnetic cards or cartridges, optical storage devices, and computer records, printouts, runs, cards, tapes, or disks (together with all programming instructions and other material necessary for their use). "DOCUMENT" includes every copy of every document where such copy is not identical to the original because of any addition, deletion, alteration, or notation. "DOCUMENT" specifically includes, but is not limited to,

statements or charts of organization; telephone and personnel directories; press releases; announcements; notices; statements of procedure and policy; biographies and personnel files; individual appointment calendars and schedules; card files; diaries; records of email; telephone logs; routing slips; records or evidence of incoming and outgoing telephone calls; itineraries; activity reports; travel vouchers and accounting; bank records; accounting and bookkeeping records and materials; financial records and statements; external or internal correspondence; cables; telexes; teletypes; telegrams; telecopies; verbal or written communications; memoranda; letters; messages; reports; plans; forecasts; summaries; briefing materials; studies; notes; working papers; graphs; maps; charts; diagrams; agendas; minutes; transcripts, records, or summaries of any meeting, conversation, conference or communication; and all attachments to any of the items set forth in this paragraph.

2. "COMMUNICATIONS" means any transmission or exchange of information between two or more persons, orally or in writing, and includes, without limitation, any conversation, contact or discussion, whether face-to-face or by means of telephone, email, telegraph, telex, electronic or other media, whether by chance or design.

3. The "RELEVANT TIME PERIOD" means the period of time between January 1, 2009 and the present date.

#### **DOCUMENTS TO BE PRODUCED:**

1. All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and Sage Silicon Solutions, Inc. ("SAGE"), on the other hand.

2. All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and David Roberts, Gyle Yearsley, Russ Lloyd, Bill Tiffany and/or Evelyn Perryman, or any of them (the "INDIVIDUALS"), on the other hand.

3. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any white paper, bid, proposal, or request for quotation between ZILOG, on the one hand, and SAGE and/or the INDIVIDUALS, on the other hand.

4. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any agreement or understanding between ZILOG, on the one hand, and SAGE or the INDIVIDUALS, on the other hand.

5. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between ZILOG or any of its employees or agents, on the one hand, and SAGE or the INDIVIDUALS or any of their employees or agents, on the other hand.

6. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between Rick White, on the one hand, and SAGE, ZILOG, or the INDIVIDUALS or any of their employees or agents, on the other hand.

7. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer to American Semiconductor, Inc. ("ASI") or any of its employees or agents.

8. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer SAGE or the INDIVIDUALS or any of their employees or agents.

9. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any invoice or statement of services received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents.

10. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any payment of any kind, in any form, made by ZILOG, during the RELEVANT TIME PERIOD, to SAGE or the INDIVIDUALS or any of their employees or agents.

11. All DOCUMENTS that evidence, reflect, refer to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.

12. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS relating to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.

13. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design data generated in connection with any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents, design including without limitation any and all such design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs.

14. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design documents and/or design files received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents, including with limitation any and all such design schedules, design and device specifications, circuit schematics, feature sets, netlists, RLT design files, test vectors, design rules, electrical rules, layout views, GDSII files, design/layout scripts, VCD data files, verification files, simulations, simulation results (graphical and test) and related information, and any documentation of any kind, name or nature, electronic or otherwise, containing information contained in a design document or design file.

15. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any repository logs for designs and design changes received from SAGE, or from any third party intellectual property providers recommended by SAGE.

16. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any all schematics, RTL, gds, specifications, test benches, simulation reports, and physical verification reports and related information that were modified in any way by SAGE.

You are further notified that if you fail to produce or permit copying or inspection as specified above that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

DATED this 8th day of March, 2013.

By Order of the Court.



---

John N. Zarian  
*Attorneys for American Semiconductor, Inc.*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of March, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2<sup>nd</sup> Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Email: gary@cooper-larsen.com  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ Telecopy

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Email: rmetcalf@cableone.net  
*Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany*

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ Telecopy

  
\_\_\_\_\_  
John N. Zarian

## Exhibit B

# Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise  
Idaho Falls  
Pocatello

Richard C. Fields  
John S. Simko  
John C. Ward  
D. James Manning  
David B. Lincoln  
Gary T. Dance  
Larry C. Hunter  
Randall A. Peterman  
Mark S. Prusynski  
Stephen R. Thomas  
Glenna M. Christensen  
Gerald T. Husch  
Scott L. Campbell  
Robert B. Burns  
Patricia M. Olsson  
Christine E. Nicholas

Bradley J. Williams  
Lee Radford  
Michael O. Roe  
David S. Jensen  
James L. Martin  
C. Clayton Gill  
Michael W. McGreaham  
David P. Gardner  
Julian E. Gabiola  
Kimberly D. Evans Ross  
Jon A. Stenquist  
Mark C. Peterson  
Tyler J. Anderson  
Andrew J. Waldera  
Dylan B. Lawrence  
C. Edward Cather III

Benjamin C. Ritchie  
Noah G. Hillen  
Matthew J. McGee  
Mindy M. Willman  
Andrea J. Rosholt  
Jetta Hatch Mathews

Robert E. Bakes, *of counsel*  
Norman M. Semanko, *of counsel*

*Willis C. Moffatt, 1907-1980*  
*Eugene C. Thomas, 1931-2010*  
*John W. Barrett, 1931-2011*  
*Kirk R. Helvie, 1956-2003*

March 25, 2013  
via E-mail

Mailing Address  
PO Box 829  
Boise ID 83701-0829

Physical Address  
US Bank Plaza  
101 S Capitol Blvd 10th Fl  
Boise ID 83702-7710

208 345 2000  
800 422 2889  
208 385 5384 Fax  
www.moffatt.com

John N. Zarian  
Parson Behle & Latimer  
960 South Broadway Avenue  
Suite 250  
Boise, ID 83706

**Re: American Semiconductor Inc. v. Sage Silicon Solutions LLC**  
MTBR&F File No. 25332.0000

Dear John:

I am writing to you on behalf of my client, Zilog, Inc. ("Zilog"), with regard to the subpoena duces tecum that you recently served on the company.

At the outset, I apologize for putting you to the expense of service and ask that you not blame Zilog for my oversight in not accepting service.

With respect to the substance of your subpoena, Zilog and I have several concerns that we hope to be able to resolve with you without the necessity of court intervention. As you know, many of the requests are not limited to any time period. As noted below, the lack of a time limitation is often problematic from our perspective. In addition, the other requests are limited to what is described as the "RELEVANT TIME PERIOD," which the subpoena defines as the period of time between January 1, 2009, and the date of the subpoena. As noted below, we believe the so-called "RELEVANT TIME PERIOD" is often overbroad. As of January 1, 2009, all five (5) of the individual defendants were employed by Zilog, and to the best of our knowledge, none of the five (5) was employed by ASI before April 12, 2009. Sage Silicon Solutions, LLC, was not formed until January 28, 2010. Thus, we believe many requests seek production of information that is not relevant to the subject matter of the action, or reasonably calculated to lead to the discovery of admissible evidence, and therefore seek discovery regarding matters outside the scope of discovery as defined in Idaho Rule of Civil Procedure 26(b)(1).

We will address our concerns by request, using the numbering system set forth in ASI's subpoena.



1. All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and Sage Silicon Solutions, Inc. ("SAGE"), on the other hand.

This request refers to "Sage Silicon Solutions, Inc.," which, to our knowledge, is not the name of any entity that has ever existed in Idaho. The request then defines that non-existing entity as "SAGE," and the subpoena, in turn, uses the term "SAGE" to refer to that non-existing entity in every other request, other than Request Nos. 2 and 7.

It seems obvious that Request No. 1 was intended to refer to "Sage Silicon Solutions, LLC," rather than "Sage Solutions, Inc." However, Request No. 1 is unlimited as to time, and Sage Silicon Solutions, LLC, was not formed until January 28, 2010. From our perspective, it seems unreasonable to require Zilog to search all of its pre-January 28, 2010, files and records for any documents regarding Sage Silicon Solutions, LLC, because the company did not exist prior to that date. Thus, Zilog objects to Request No. 1 because it seeks production of information that is not relevant to the subject matter of the action, or reasonably calculated to lead to the discovery of admissible evidence, and therefore seeks discovery regarding matters outside the scope of discovery as defined in Idaho Rule of Civil Procedure 26(b)(1).

2. All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and David Roberts, Gyle Yearsley, Russ Lloyd, Bill Tiffany and/or Evelyn Perryman, or any of them (the "INDIVIDUALS"), on the other hand.

This request is unlimited to time and therefore includes the time periods during which the individual defendants were employed by Zilog. In addition, this request uses the term "business relationship" without stating whether that term is to include an employment relationship. We think it is unreasonable to request Zilog to produce all documents that evidence, reflect or refer to any of the employment relationships that existed between Zilog and the individual defendants.

3. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any white paper, bid, proposal, or request for quotation between ZILOG, on the one hand, and SAGE and/or the INDIVIDUALS, on the other hand.

This request is unlimited to time, and we think it is unreasonable to ask Zilog to search through records created during the time the individual defendants were employed by Zilog to respond to this request.

4. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any agreement or understanding between ZILOG, on the one hand, and SAGE or the INDIVIDUALS, on the other hand.

This request does not define the term "understanding," and we do not know whether the term is used simply as another word for a formal agreement or whether the term is intended to include informal agreements, shared opinions, etc. In addition, this request is unlimited as to time and subject matter. Therefore, this request could be read to require production of documents regarding any understanding of any kind, regarding any topic, between Zilog and any of the individual defendants while the individual defendant was employed by Zilog, long before any of the individuals worked for ASI and long before Sage Silicon Solutions, LLC was created. Thus, we think this request is overly broad.

5. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between ZILOG or any of its employees or agents, on the one hand, and SAGE or the INDIVIDUALS or any of their employees or agents, on the other hand.

This request is objectionable because it unlimited as to time and subject matter. Thus, it seeks discovery of communications between any individual defendant and any Zilog employee, at any time, even while the individual defendant was still employed by Zilog, without regard to the subject matter of the communication or its relevance, if any, to the subject matter of this lawsuit.

6. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between Rick White, on the one hand, and SAGE, ZILOG, or the INDIVIDUALS or any of their employees or agents, on the other hand.

This request is objectionable because it is unlimited as to time or subject. It seeks discovery of each and every communication between Rick White and any other Zilog employee (whether or not the employee is one of the individual defendants) that

occurred at any time during the many years Mr. White has been employed by Zilog, regarding any topic, irrespective of the topic's lack of any relevance to the subject matter of this lawsuit.

7. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer to American Semiconductor, Inc. ("ASI") or any of its employees or agents.

This request is objectionable for several reasons. First, the time period encompassed by the "RELEVANT TIME PERIOD" is overly broad. For example, the requested time period is objectionable because it includes the time period when all of the individual defendants were still employed by Zilog and none of the individual defendants was yet employed by ASI. Second, the subject matter of the request is not limited to the subject matter of this action. Third, the request seeks discovery of communications that refer to any ASI employee or agent, and Zilog does not know the identity of all of ASI's employees and agents.

8. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer [to] SAGE or the INDIVIDUALS or any of their employees or agents.

This request is objectionable. The time period encompassed by the "RELEVANT TIME PERIOD" is overly broad. The requested time period includes time periods during which all of the individual defendants were employed by Zilog and Sage Silicon Solutions, LLC had not been created. In addition, the subject matter of the request is not limited to the subject matter of this action. Thus, the request seeks discovery of communications, including personal, non-business and non-work related communications, that have no relevance to this lawsuit, ASI, Sage Silicon Solutions, LLC, or even to an individual defendant's employment with Zilog.

9. All DOCUMENTS that evidence, reflect, refer to, constitute, or contain any invoice or statement of services received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents.

This request is objectionable insofar as it seeks production of documents that evidence, reflect, refer to, constitute, or contain any invoice or statement of services received by ZILOG from one of the individual defendants while that individual defendant was still employed by Zilog.

10. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any payment of any kind, in any form, made by ZILOG, during the RELEVANT TIME PERIOD, to SAGE or the INDIVIDUALS or any of their employees or agents.

This request is objectionable insofar as it seeks production of documents that evidence, reflect, refer to, constitute, or contain any payment (including but not limited to paychecks and checks for reimbursement of business expenses) made by Zilog to one of the individual defendants while that individual defendant was still employed by Zilog.

11. All DOCUMENTS that evidence, reflect, refer to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.

This request is objectionable insofar as it seeks production of documents that evidence, reflect, or refer to any employment services provided or otherwise rendered to Zilog by one of the individual defendants while that individual defendant was still employed by Zilog.

12. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS relating to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.

This request is objectionable insofar as it seeks production of documents that evidence, reflect, refer to, constitute, or contain any communication regarding an employment service provided or otherwise rendered to Zilog by one of the individual defendants while that individual defendant was still employed by Zilog and not yet employed by ASI.

13. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design data generated in connection with any services provided or otherwise rendered to ZILOG, during the

RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents, design including without limitation any and all such design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs.

This request is objectionable insofar as it seeks production of documents regarding design data provided or otherwise rendered to Zilog by one of the individual defendants while that individual defendant was still employed by Zilog and not yet employed by ASI.

14. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design documents and/or design files received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents, including with[out] limitation any and all such design schedules, design and device specifications, circuit schematics, feature sets, netlists, RLT design files, test vectors, design rules, electrical rules, layout views, GDSII files, design/layout scripts, VCD data files, verification files, simulations, simulation results (graphical and test) and related information, and any documentation of any kind, name or nature, electronic or otherwise, containing information contained in a design document or design file.

This request is objectionable insofar as it seeks production of documents regarding any design documents and/or design files received by Zilog from one of the individual defendants while that individual defendant was still employed by Zilog and not yet employed by ASI.

15. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any repository logs for designs and design changes received from SAGE, or from any third party intellectual property providers recommended by SAGE.

This request will be objectionable because it requires Zilog to obtain permission from third parties to make the requested disclosure.

16 All DOCUMENTS that evidence, reflect, refer to, constitute or contain any [and] all schematics, [RLT], gds, specifications, test benches, simulation reports, and physical verification reports and related information that were modified in any way by SAGE.

This request will likely be unduly burdensome and expensive if ASI insists on hard copies of all of the requested information and will not agree to view the information (as Confidential and

John N. Zarian  
March 25, 2013  
Page 7

Attorney Eyes Only) electronically at a computer terminal that  
Zilog would make available in Meridian.

After you have reviewed my client's concerns, please let me know your client's position.  
Obviously, we would like to resolve these issues without involving the Court.

Thank you for your consideration of the foregoing.

Very truly yours,



Gerald T. Husch

GTH/cih

# Exhibit C



960 Broadway Avenue, Suite 250  
Boise, ID 83706  
Telephone (208) 562-4900  
Facsimile (208) 562-4901

A PROFESSIONAL  
LAW CORPORATION

John N. Zarian

Direct (208) 562-4902  
JZarian@parsonsbehle.com

March 29, 2013

**VIA EMAIL & U.S. MAIL**

Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK & FIELDS, CHARTERED  
PO Box 829  
Boise, ID 83701-0829

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.*,  
Case No. CV OC 1123344

Dear Counsel:

I am writing in response to your letter dated March 25, 2013 letter addressing your objections to the subpoena duces tecum that American Semiconductor, Inc. ("ASI") served on Zilog, Inc. ("Zilog") on March 8, 2013. I have noted your objections and address each of them, in turn, below.

As a general matter, your objections relating to the temporal scope of the requests are problematic. Your letter asserts that all five of the individual defendants were employed by Zilog as of January 1, 2009, but also admits that April 12, 2009 is the earliest date for the beginning of the individual defendants' employment with ASI. Thus, it appears that your primary objection to the "RELEVANT TIME PERIOD" is addressed to the inclusion of the 71-day period between January 1, 2009 and April 12, 2009. Under the circumstances, we believe it is reasonable to include in the "RELEVANT TIME PERIOD" a brief period of time during which the individual defendants were assuming, transitioning and/or preparing for employment with ASI.

Thus, we request all documents responsive to the "RELEVANT TIME PERIOD."

Your specific objections regarding ASI's requests are addressed below.

**1. All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and Sage Silicon Solutions, Inc. ("SAGE"), on the other hand.**

I appreciate the correction regarding the identity of Sage as an LLC. Respectfully, though, Zilog's objections are unfounded. As stated in the objections, Sage was not formed until January 28, 2010. Accordingly, Zilog could not have entered into a business



relationship with Sage until that date, or shortly prior, and any documents relating to Zilog's business relationship with Sage would necessarily be limited to a reasonably proximate period of time. Therefore, ASI's request is not overbroad and is reasonably calculated to lead to the discovery of admissible evidence under Idaho Rule of Civil Procedure 26(b)(1). If you still believe otherwise, please let us know the alternative period of time to which Zilog proposes to limit its response.

**2. All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and David Roberts, Gyle Yearsley, Russ Lloyd, Bill Tiffany and/or Evelyn Perryman, or any of them (the "INDIVIDUALS"), on the other hand.**

The individual defendants' employment relationship with Zilog is particularly relevant to the instant litigation. Plaintiff alleges that the individual defendants assumed employment with ASI, and soon thereafter were engaged by Zilog to do contract work in direct violation of their respective employment agreements. Under the circumstances, any responsive documents would necessarily be limited to a reasonably bounded period of time, and, presumably, would not require Zilog to search for records created during an unreasonably large period of time. Accordingly, all documents reflecting or referring to any "business relationship" between Zilog and the individual defendants are relevant and are reasonably calculated to lead to the discovery of admissible evidence.

**3. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any white paper, bid, proposal, or request for quotation between ZILOG, on the one hand, and SAGE and/or the INDIVIDUALS, on the other hand.**

In the main, this request seeks to discover any white paper, bid, proposal, or request for quotation between Zilog and Sage and/or the individual defendants relating to the individual defendants' work as independent contractors for Zilog, whether created before or after the formal creation of Sage. Accordingly, any responsive documents are relevant and are necessarily limited to a reasonably bounded period of time, and, presumably, would not require Zilog to search for records created during an unreasonably large period of time. Therefore, ASI's request is not overbroad and is reasonably calculated to lead to the discovery of admissible evidence under Idaho Rule of Civil Procedure 26(b)(1). If you believe otherwise, please let us know the alternative period of time to which Zilog proposes to limit its response.

**4. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any agreement or understanding between ZILOG, on the one hand, and SAGE or the INDIVIDUALS, on the other hand.**

As used in this request, the term "understanding" means a mutual agreement not formally entered into but in some degree binding on each side (*Merriam-Webster*). To be clear, this request is primarily directed at documents evidencing agreements between Zilog and Sage and/or the individual defendants acting in their capacity as independent contractors and/or Sage employees. Accordingly, any responsive documents would necessarily be limited to a reasonably bounded period of time, and, presumably, would not require Zilog to search for records created during an unreasonably large period of time. Under the circumstances, ASI's request is not overbroad and is reasonably calculated to lead to the discovery of admissible evidence under Idaho Rule of Civil Procedure 26(b)(1). If you believe otherwise, please let us know the alternative period of time to which Zilog proposes to limit its response.

**5. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between ZILOG or any of its employees or agents, on the one hand, and SAGE or the INDIVIDUALS or any of their employees or agents, on the other hand.**

This request is primarily directed at documents evidencing agreements between Zilog and Sage and/or the individual defendants in their capacity as independent contractors and/or Sage employees. Accordingly, any responsive documents would necessarily be limited to a reasonably bounded period of time, and, presumably, would not require Zilog to search for records created during an unreasonably large period of time. Under the circumstances, ASI's request is not overbroad and is reasonably calculated to lead to the discovery of admissible evidence under Idaho Rule of Civil Procedure 26(b)(1). If you believe otherwise, please let us know the alternative period of time to which Zilog proposes to limit its response.

**6. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between Rick White, on the one hand, and SAGE, ZILOG, or the INDIVIDUALS or any of their employees or agents, on the other hand.**

ASI agrees to limit this request to the "RELEVANT TIME PERIOD" and to limit the subject matter to communications involving Rick White that relate, in any way, to ASI, Sage and/or the individual defendants.

**7. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer to American Semiconductor, Inc. ("ASI") or any of its employees or agents.**

As discussed above, Zilog's objection to the "RELEVANT TIME PERIOD" appears to be focused on the inclusion of a 71-day period between January 1, 2009 and April 12, 2009. We believe this objection is clearly insufficient to refuse compliance with ASI's subpoena. Indeed, any communication between Zilog and ASI during the "RELEVANT TIME PERIOD" is highly likely to be relevant to the subject matter of the instant litigation and reasonably calculated to lead to the discovery of admissible evidence under Idaho Rule of Civil Procedure 26(b)(1).

**8. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer to SAGE or the INDIVIDUALS or any of their employees or agents.**

As discussed above, Zilog's objection to the "RELEVANT TIME PERIOD" appears to be unmeritorious. Furthermore, any communication between Zilog and Sage and/or the individual defendants during the "RELEVANT TIME PERIOD" is very likely to be relevant to the subject matter of the instant litigation and reasonably calculated to lead to the discovery of admissible evidence under Idaho Rule of Civil Procedure 26(b)(1).

**9. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any invoice or statement of services received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents.**

Zilog objects to this request on the grounds that it requests invoices or statement of services received by Zilog from any of the individual defendants while still employed by Zilog. It seems unlikely that a situation could arise in which Zilog was receiving "invoices" from individual "employed" by Zilog. Regardless, for the relevant time period, such documents are relevant and discoverable. Moreover, any and all documents evidencing invoices or statements of service received by Zilog from Sage and/or the individual defendants in their capacity as independent contractors and/or Sage employees is unquestionably relevant and should have been produced.

**10. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any payment of any kind, in any form, made by ZILOG, during the RELEVANT TIME PERIOD, to SAGE or the INDIVIDUALS or any of their employees or agents.**

This request is primarily directed at documents evidencing payment made by Zilog to Sage and/or the individual defendants in their capacity as independent contractors and/or Sage employees. However, for the relevant time period, all such documents are relevant and discoverable. Please produce all responsive documents.

**11. All DOCUMENTS that evidence, reflect, refer to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.**

This request is primarily directed at documents evidencing services provided to Zilog by Sage and/or by the individual defendants acting in their capacity as independent contractors and/or Sage employees. However, for the relevant time period, all such documents are relevant and discoverable. Please produce all responsive documents.

**12. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS relating to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.**

This request is primarily directed at documents evidencing communications relating to services provided to Zilog by Sage and/or by the individual defendants acting in their capacity as independent contractors and/or Sage employees. That said, for the relevant time period, all such documents are relevant and discoverable. At a minimum, please produce all responsive documents evidencing any communications relating to services provided to Zilog by Sage and/or by the individual defendants acting in their capacity as independent contractors and/or Sage employees.

**13. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design data generated in connection with any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents, design including without limitation any and all such design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs.**

This request is primarily directed at documents evidencing design data generated in connection with services provided to Zilog by Sage and/or by the individual defendants acting in their capacity as

independent contractors and/or Sage employees. Nevertheless, for the relevant time period, all such documents are relevant and discoverable, and any confidentiality issues can be addressed by resort to the Protective Order previously entered by the Court in this matter. (Please let us know if you need a copy of that order.) At a minimum, please produce at once all responsive documents evidencing any design data generated in connection with services provided to Zilog by Sage and/or by the individual defendants acting in their capacity as independent contractors and/or Sage employees.

**14. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design documents and/or design files received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents, including with limitation any and all such design schedules, design and device specifications, circuit schematics, feature sets, netlists, RLT design files, test vectors, design rules, electrical rules, layout views, GDSII files, design/layout scripts, VCD data files, verification files, simulations, simulation results (graphical and test) and related information, and any documentation of any kind, name or nature, electronic or otherwise, containing information contained in a design document or design file.**

This request is primarily directed at documents evidencing design documents and/or design files received by Zilog from Sage and/or from the individual defendants acting in their capacity as independent contractors and/or Sage employees. Nevertheless, for the relevant time period, all such documents are relevant and discoverable, and any confidentiality issues can be addressed by resort to the Protective Order entered by the Court. At a minimum, please produce at once all responsive documents evidencing any design documents and/or design files received by Zilog from Sage and/or from the individual defendants acting in their capacity as independent contractors and/or Sage employees.

**15. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any repository logs for designs and design changes received from SAGE, or from any third party intellectual property providers recommended by SAGE.**

To the extent any of Zilog's proprietary rights are implicated, a Protective Order is in place to protect such confidentiality concerns.

**16. All DOCUMENTS that evidence, reflect, refer to, constitute or contain any all schematics, RTL, gds, specifications, test benches, simulation reports, and physical verification reports and related information that were modified in any way by SAGE.**

To the extent any of Zilog's proprietary rights are implicated, a Protective Order is in place to protect such confidentiality concerns.

\* \* \* \* \*

We request that you provide a substantive response to the foregoing by the close of business on Friday, April 5, 2013.

If you would like, we are available to discuss these issues with you in person, or by telephone, at a mutually convenient time next week.

Thank you for your continued courtesy and cooperation in this matter.

Sincerely,

Parsons Behle & Latimer

A handwritten signature in black ink, appearing to read "John N. Zarian", written in a cursive style.

John N. Zarian

cc: Jeffrey M. Sanchez

## Exhibit D

960 Broadway Avenue  
Suite 250  
Boise, ID 83706  
Telephone 208.562.4900  
Facsimile 208.562.4901



A Professional  
Law Corporation

**John N. Zarian**  
**Attorney at Law**  
*Admitted in Idaho, Utah and California*  
Direct Dial (208) 562-4902  
E-Mail JZarian@ParsonsBehle.com

Boise • Las Vegas • Reno • Salt Lake City • Spokane • Washington, D.C.

May 20, 2013

**VIA EMAIL & U.S. MAIL**

Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK & FIELDS, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.*,  
Case No. CV OC 1123344

Dear Gerry:

I am writing to follow up concerning American Semiconductor, Inc.'s ("ASI") *subpoena duces tecum* served on your client, Zilog, Inc. ("Zilog"), on March 8, 2013.

As you know, we responded to each one of Zilog's objections set forth in your March 25, 2013 letter and addressed each one in turn in correspondence to you dated March 29, 2013. As explained in our March 29, 2013 letter, we believe that Zilog's objections to the subpoena were not well taken. Consequently, in that same correspondence, we requested that Zilog provide substantive responses to requests that were the subject of improper objections – by the close of business on April 5, 2013. Regrettably, to date, nearly two months later, those substantive responses have not been forthcoming. By now, notwithstanding our recent settlement meeting, we hoped and expected that Zilog would have produced, at the very least, those reasonably available documents requested by ASI.

As a means of resolving this matter informally, please confirm by close of business tomorrow, **May 21, 2013**, the status of Zilog's supplementation of its responses to the March 8, 2013 subpoena including, but not limited to, the status of any document production to be made immediately and forthwith.




May 20, 2013  
Page Two

As always, we are available to discuss these matters with you at a mutually convenient time.

Again, thank you for your continued courtesy and cooperation in this matter.

Very truly yours,

Parsons Behle & Latimer

A handwritten signature in black ink, appearing to read 'John N. Zarian', written in a cursive style.

John N. Zarian

cc: Kennedy K. Luvai

# Exhibit E

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
PARSONS BEHLE & LATIMER  
960 South Broadway Avenue, Suite 250  
Boise, ID 83706  
Telephone: (208) 562-4900  
Facsimile: (208) 562-4901  
Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

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RELATED COUNTER ACTIONS

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**Case No. CV OC 1123344**

**PLAINTIFF'S FIRST SET OF  
REQUESTS FOR PRODUCTION TO  
DEFENDANT ZILOG, INC.**

*The Honorable Thomas F. Neville*

Pursuant to Idaho Rule of Civil Procedure 34, plaintiff American Semiconductor, Inc. hereby request that defendant Zilog, Inc. produce copies of the documents and things set forth below within thirty (30) days at the offices of Parsons, Behle & Latimer, 960 Broadway Avenue, Suite 250, Boise, Idaho 83706, subject to the following definitions and instructions.

### **DEFINITIONS**

1. "DOCUMENT," as used herein, shall mean every writing or record of whatever type and description in the possession, custody or control of the Zilog, Inc. ("ZILOG") (including all writings and records that have been transferred from ZILOG to its accountants, attorneys, or consultants), however made, and includes all handwritten, typed, printed, recorded, transcribed, taped, filmed, graphic- or sound-reproduction material, magnetic cards or cartridges, optical storage devices, and computer records, printouts, runs, cards, tapes, or disks (together with all programming instructions and other material necessary for their use). "DOCUMENT" includes every copy of every document where such copy is not identical to the original because of any addition, deletion, alteration, or notation. "DOCUMENT" specifically includes, but is not limited to, statements or charts of organization; telephone and personnel directories; press releases; announcements; notices; statements of procedure and policy; biographies and personnel files; individual appointment calendars and schedules; card files; diaries; records of email; telephone logs; routing slips; records or evidence of incoming and outgoing telephone calls; itineraries; activity reports; travel vouchers and accounting; bank records; accounting and bookkeeping records and materials; financial records and statements; external or internal correspondence; cables; telexes; teletypes; telegrams; telecopies; verbal or written communications; memoranda; letters; messages; reports; plans; forecasts; summaries; briefing materials; studies; notes; working papers; graphs; maps; charts; diagrams; agendas; minutes;

transcripts, records, or summaries of any meeting, conversation, conference or communication; and all attachments to any of the items set forth in this paragraph.

2. "COMMUNICATIONS," as used herein, shall mean any transmission or exchange of information between two or more persons, orally or in writing, and includes, without limitation, any conversation, contact or discussion, whether face-to-face or by means of telephone, email, telegraph, telex, electronic or other media, whether by chance or design.

3. The "RELEVANT TIME PERIOD," as used herein, shall mean the period of time between January 1, 2009 and the present date.

4. "PLAINTIFF" and/or "ASI," as used herein, shall refer to American Semiconductor, Inc.

5. "ZILOG," "you," and "your," as used herein, shall refer to Zilog, Inc.

6. "SAGE," as used herein, shall refer to Sage Silicon Solutions, LLC.

7. "INDIVIDUALS," as used herein, shall refer to David Roberts, Gyle Yearsley, Russ Lloyd, Bill Tiffany and/or Evelyn Perryman, or any of them.

8. "Medium" or "media," as used herein, shall refer general to any means of mass communication including, without limitation, communication by or through television, radio, the Internet (including e-mail), printed brochures, catalogs, newspapers, magazines, periodicals, journals, leaflets, flyers, circulars, billboards, banners, or signs.

9. "Person" or "persons," as used herein, shall mean natural persons, all governmental entities, agencies, officers, departments, or affiliates of the United States of America, or any other governmental entity, and any corporation, foundation, partnership, proprietorship, association, organization, or group of natural persons.

10. "Agreement," as used herein, shall mean any contract, transaction, license, or other arrangement of any kind, whether conditional, executed, executory, express, or implied, and whether oral or written, in which rights are granted or obligations are assumed. The term "agreement" shall encompass completed, actual, contemplated, or attempted agreements or renewals of agreements.

11. "Thing(s)," as used herein, shall mean any tangible item, and shall be construed as broadly as possible under the Idaho Rules of Civil Procedure.

12. As used herein, the terms "relate" and "refer" are used in their broadest possible sense and include all matters comprising, constituting, containing, concerning, embodying, reflecting, involving, discussing, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, for each request whichever definition makes the request most inclusive.

13. As used herein, "and" and "or" shall each be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses that might otherwise be construed to be outside its scope.

14. As used herein, the singular form of a noun or a pronoun shall be considered to include within its meaning the plural form of a noun or a pronoun so used, and vice versa; the use of the masculine form of a pronoun shall be considered to include also within its meaning the feminine form of the pronoun so used, and vice versa; the use of any tense of any verb shall be considered to include within its meaning all other tenses of the verb so used.

### INSTRUCTIONS

1. All documents must be produced in a form that renders them susceptible to copying.
2. All electronic documents and records must be produced with an explanation sufficient to render the records and information intelligible.
3. Documents from any single file should be produced in the same order as they were found in such file. If copies of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the original.
4. Each document should be segregated and identified by the request to which it is primarily responsive or produced as it is kept in the ordinary course of business.
5. All requests herein are directed to those documents within your possession, custody or control, or within the possession, custody or control of your agents, servants and employees and your attorneys. They are also directed to those firms, corporations, partnerships, or trusts that you control and to documents in the possession, custody or control of employees, agents and representatives of such entities.
6. If any of the documents requested herein are no longer in your possession, custody or control, identify each such requested document by date, type of document, person(s) from whom sent, person(s) to whom sent, and person(s) receiving copies and provide a summary of its pertinent contents.
7. If any of the documents requested herein has been destroyed or is no longer in existence, for any reason, describe the content of such document as completely as possible, the date of such destruction and the name of the person who ordered or authorized such destruction.

8. With respect to all documents that you are withholding because the document is asserted to be immune from discovery, state separately with respect to each document:

- (a) the general nature of such document, *i.e.*, whether it is a letter, memorandum, report, pamphlet, etc.;
- (b) the date on which each such document or thing was created, reproduced or transcribed;
- (c) the name, title, and business address of each person who signed or prepared each such document and the name and business address of each person who has edited, corrected, revised or amended the document;
- (d) the name and business address of each person to whom each such document was communicated or made available, or otherwise known to you as being an intended or actual recipient of a copy thereof;
- (e) the name and business address of each person having knowledge of the contents of the document;
- (f) the name and business address of each person having possession, custody, or control of the document or any identical or non-identical copy;
- (g) the number of pages;
- (h) a brief description of the nature and subject matter of the document in sufficient detail to permit other parties to this action to assess the applicability of the asserted privilege or immunity;
- (i) the paragraph(s) of the request to which the document is responsive; and
- (j) the grounds for the claimed immunity.



9. There shall be a continuing duty on ZILOG to furnish additional documents in response to these Document Requests in accordance with Rule 26(e) of the Idaho Rules of Civil Procedure. Any additional information relating in any way to these requests that you acquire, or that becomes known to you, up to and including the time of trial, shall be furnished to ASI promptly after such information is acquired by you or becomes known to you.

10. If you find any request or any term used in a request to be vague, ambiguous, subject to varying interpretations, or unclear, state what portion of the request or term you find to be vague, ambiguous, subject to varying interpretations, or unclear and state the construction employed by you in responding to the request.

11. In producing documents and things responsive to these requests, ZILOG shall furnish all documents within its possession, custody, or control, regardless of whether these documents are possessed directly by ZILOG, or by its present or past agents, employees, representatives, investigators, or attorneys.

#### DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 1: All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and SAGE, on the other hand.

REQUEST FOR PRODUCTION NO. 2: All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and the INDIVIDUALS, on the other hand.

REQUEST FOR PRODUCTION NO. 3: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any white paper, bid, proposal, or request for quotation between ZILOG, on the one hand, and SAGE and/or the INDIVIDUALS, on the other hand.

REQUEST FOR PRODUCTION NO. 4: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any agreement or understanding between ZILOG, on the one hand, and SAGE or the INDIVIDUALS, on the other hand.

REQUEST FOR PRODUCTION NO. 5: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between ZILOG or any of its employees or agents, on the one hand, and SAGE or the INDIVIDUALS or any of their employees or agents, on the other hand.

REQUEST FOR PRODUCTION NO. 6: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between Rick White, on the one hand, and SAGE, ZILOG, or the INDIVIDUALS or any of their employees or agents, on the other hand.

REQUEST FOR PRODUCTION NO. 7: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer to ASI or any of its employees or agents.

REQUEST FOR PRODUCTION NO. 8: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer SAGE or the INDIVIDUALS or any of their employees or agents.

REQUEST FOR PRODUCTION NO. 9: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any invoice or statement of services received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents.

REQUEST FOR PRODUCTION NO. 10: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any payment of any kind, in any form, made by ZILOG, during the RELEVANT TIME PERIOD, to SAGE or the INDIVIDUALS or any of their employees or agents.

REQUEST FOR PRODUCTION NO. 11: All DOCUMENTS that evidence, reflect, refer to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.

REQUEST FOR PRODUCTION NO. 12: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS relating to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.

REQUEST FOR PRODUCTION NO. 13: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design data generated in connection with any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents, design including without limitation any and all such design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs.

REQUEST FOR PRODUCTION NO. 14: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design documents and/or design files received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents, including with limitation any and all such design schedules, design and device specifications, circuit schematics, feature sets, netlists, RLT design files, test vectors, design rules, electrical rules, layout views, GDSII files, design/layout scripts, VCD data files,

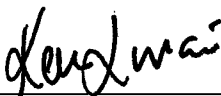
verification files, simulations, simulation results (graphical and test) and related information, and any documentation of any kind, name or nature, electronic or otherwise, containing information contained in a design document or design file.

REQUEST FOR PRODUCTION NO. 15: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any repository logs for designs and design changes received from SAGE, or from any third party intellectual property providers recommended by SAGE.

REQUEST FOR PRODUCTION NO. 16: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any all schematics, RTL, gds, specifications, test benches, simulation reports, and physical verification reports and related information that were modified in any way by SAGE.

DATED this 12th day of July, 2013.

PARSONS BEHLE & LATIMER

By: 

Kennedy K. Luvai  
Attorneys for Plaintiff American  
Semiconductor, Inc., an Idaho Corporation

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley  
and William Tiffany

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: gary@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley  
and William Tiffany

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: rmetcalf@cableone.net

Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
Attorneys for Defendant Zilog, Inc.

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: gth@moffatt.com

  
\_\_\_\_\_  
Kennedy K. Luvai

John N. Zarian, ISB #7390  
Peter M. Midgley, ISB #6913  
PARSONS BEHLE & LATIMER  
960 Broadway Avenue, Suite 250  
Boise, Idaho 83706  
Telephone: 208.562.4900  
Facsimile: 208.562.4901  
JZarian@parsonsbehle.com  
PMidgley@parsonsbehle.com

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 112334

*The Honorable Thomas F. Neville*

**NOTICE OF SERVICE OF  
DISCOVERY REQUESTS**

I hereby certify that on the 12th day of July, 2013, I caused to be served a true and correct copy of **PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT ZILOG, INC.**, along with this **NOTICE OF SERVICE OF DISCOVERY REQUESTS**, to the following by the method indicated:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley  
and William Tiffany

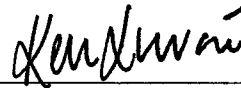
☒ U.S. Mail, Postage Prepaid  
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Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley  
and William Tiffany

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☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: rmetcalf@cableone.net

Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
Attorneys for Defendant Zilog, Inc.

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: gth@moffatt.com



Kennedy K. Luvai

# Exhibit F



960 Broadway Avenue  
Suite 250  
Boise, ID 83706  
Telephone 208.562.4900  
Facsimile 208.562.4901



A Professional  
Law Corporation

**John N. Zarian**  
**Attorney at Law**  
*Admitted in Idaho, Utah and California*  
Direct Dial (208) 562-4902  
E-Mail JZarian@ParsonsBehle.com

Boise • Las Vegas • Reno • Salt Lake City • Spokane • Washington, D.C.

August 15, 2013

**VIA FAX AND EMAIL**

Mr. Gerald T. Husch  
Stephen R. Thomas  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

**Re:   *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.***  
**Case No. CV OC 1123344**

Dear Counsel:

I write to draw your attention to a continued and very disappointing pattern by your client, Zilog, Inc. ("Zilog"), in delaying good faith attempts to move this litigation forward.

On July 12, 2013, by hand delivery, American Semiconductor, Inc. ("ASI") served its first set of document requests directed at Zilog. As expressly set forth in the document requests, Zilog had 30 days to serve its responses – that is, through August 12, 2013. To-date, however, we have not received any responses or objections to the document requests.

As a consequence, any and all objections to the documents requests are deemed waived. Please confirm that Zilog will be producing all responsive documents forthwith and, in any event, on or before August 22, 2013.

Significantly, the document requests served on July 12, 2013 tracked the document requests that were incorporated as part of ASI's subpoena to Zilog on March 8, 2013 – to which Zilog failed and refused to respond. Thus, Zilog has been on notice of the nature and scope of records sought by ASI for *more than five months*.

Given Zilog's serial refusals to comply with its discovery obligations or to produce documents in this case, please consider this letter our good faith attempt to meet and confer in the hopes of resolving this matter informally.

August 15, 2013  
Page Two

As a final matter, we note that Zilog's answer was also untimely. Pursuant to a stipulated order duly adopted by the Court, ASI filed and served its Second Amended Complaint on July 2, 2013. By our calculation, Zilog had until August 5, 2013 in which to serve its response to the complaint, *i.e.*, 30 days provided for by order plus three days in light of ASI's service of the Second Amended Complaint by mail. However, based on the certificate of service, Zilog's answer to the Second Amended Complaint was not served until August 6, 2013. On behalf of ASI, we expressly reserve all rights and remedies.

Please feel free to contact me or Kennedy Luvai if you wish to discuss the foregoing.

Very truly yours,

PARSONS BEHLE & LATIMER

A handwritten signature in black ink, appearing to read 'John N. Zarian', written in a cursive style.

John N. Zarian

cc: Kennedy K. Luvai  
Client

# Exhibit G

## Judy Holder

---

**From:** Gerry Husch <GTH@moffatt.com>  
**Sent:** Monday, August 19, 2013 6:01 PM  
**To:** Vicky R. Glass; Steve Thomas; Carla Holbrook  
**Cc:** Kennedy K. Luvai; John N. Zarian; Cathy Pontak  
**Subject:** RE: American Semiconductor v. Sage

John,

I have been in Orofino for the past two weeks in deposition preparation and depositions, but I returned and read your letter today.

Prior to my departure, I had drafted responses to ASI's discovery requests. When I left, I assumed that those responses would be served on you in my absence. Although my assumption was incorrect, Zilog has not waived its objections to ASI's discovery requests. Zilog's objections to ASI's discovery requests are essentially the same as those that Zilog made in response to ASI's subpoena duces tecum, and ASI has been aware of Zilog's objections for over four months.

I was not in the office on the day Zilog's answer to ASI's second amended complaint was filed. However, it was only one day late, and ASI suffered no prejudice from the delay. The fact that it took ASI over a year and a half to serve Zilog makes one day seem rather insignificant.

In any event, I am back in the office and I will immediately contact my client regarding ASI's discovery requests.

Gerry

---

GERALD T. HUSCH

101 S. Capitol Blvd., 10th Floor (83702)  
PO Box 829

Boise, Idaho 83701

Direct Phone: 208.385.5406

Direct Fax: 208.385.5406

Email [gth@moffatt.com](mailto:gth@moffatt.com)

web [www.moffatt.com](http://www.moffatt.com)

***Moffatt Thomas***

---

**From:** Vicky R. Glass [<mailto:VGlass@parsonsbehle.com>]

**Sent:** Thursday, August 15, 2013 4:42 PM

**To:** Gerry Husch; Steve Thomas; Carla Holbrook

**Cc:** Kennedy K. Luvai; John N. Zarian; Cathy Pontak

**Subject:** American Semiconductor v. Sage

Please find attached letter from John Zarian. Thank you.



**Vicky R. Glass | Legal Secretary**

960 Broadway Avenue, Suite 250 | Boise, Idaho 83706

Main 208.562.4900 | Direct 208.562.4876 | Fax 208.562.4901

**[parsonsbehle.com](http://parsonsbehle.com) | vCard**

---

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NOTICE: This e-mail, including attachments, constitutes a confidential attorney-client or other confidential communication. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this communication in error, do not read it. Please delete it from your system without copying it, and notify the sender by reply e-mail or by calling (208) 345-2000, so that our address record can be corrected. Thank you.

NOTICE: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:20

OCT 11 2013

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIOAK  
DEPUTY

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
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Facsimile (208) 385-5384  
srt@moffatt.com  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

vs.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DEFENDANT ZILOG, INC.'S MOTION  
TO VACATE AND RESET  
OCTOBER 18, 2013, HEARING ON  
PLAINTIFF'S MOTION TO COMPEL**

ORIGINAL

**DEFENDANT ZILOG, INC.'S MOTION TO VACATE AND RESET OCTOBER 18,  
2013, HEARING ON PLAINTIFF'S MOTION TO COMPEL - 1**

Client: 3046038.1  
000543

an

COMES NOW defendant Zilog, Inc. (hereinafter "Zilog"), by and through its counsel of record, and for the good cause stated below hereby moves the Court to VACATE the October 18, 2013, hearing at 11:00 a.m. on Plaintiff American Semiconductor, Inc.'s Motion to Compel Against Defendant Zilog, Inc. (hereinafter "Motion to Compel") and RESET the hearing at a time next available on the Court's calendar, understood to be November 15, 2013, at 2:30 p.m. Defendant so moves because both of its counsel assigned to this file are out of town due to long extant conflicts and would much prefer to present Zilog's position to the Court in person rather than by telephone.

In support of its motion, from opposing counsel on October 8, 2013, Zilog requested that the hearing be rescheduled as a professional courtesy, which plaintiff was unable to grant. (The present hearing date was not reviewed initially with Zilog counsel before being noticed by plaintiff.) Pertinent e-mails documenting the requested change are attached as **Exhibit 1**, showing that Zilog attorney, Gerald T. Husch, will be in Orofino, Idaho, on October 18, 2013, preparing for a trial commencing October 21, 2013, and that Zilog attorney, Stephen R. Thomas, will be boarding a plane returning to Boise from Washington, D.C., on October 18, 2013, at the time of the hearing. In addition, plaintiff has now received a massive production of documents, as requested, because on October 7, 2013, plaintiff was served with nearly 27,000 electronic files arguably responsive to the instant Requests for Production. Accordingly, plaintiff will suffer no prejudice by the requested short delay.

WHEREFORE, Defendant Zilog respectfully requests that the Court vacate and reset the hearing on plaintiff's Motion to Compel presently scheduled for October 18, 2013, due to the inability of Zilog's counsel to appear in person, the potential mootness of the underlying motion, and the absence of prejudice to plaintiff.

DATED this 11th day of October, 2013.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By  \_\_\_\_\_

*for* Stephen R. Thomas – Of the Firm  
Attorneys for Defendant Zilog, Inc.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2013, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG, INC.'S MOTION TO VACATE AND RESET OCTOBER 18, 2013, HEARING ON PLAINTIFF'S MOTION TO COMPEL** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

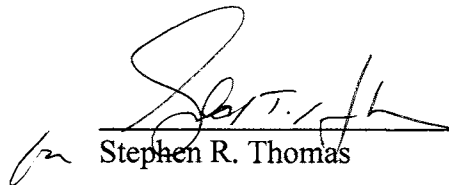
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☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Facsimile (208) 337-4854  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
960 Broadway Ave., Suite 250  
Boise, ID 83706  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

  
Stephen R. Thomas

# **EXHIBIT 1**

## Steve Thomas

---

**From:** Steve Thomas  
**Sent:** Tuesday, October 08, 2013 3:32 PM  
**To:** Gerry Husch; John N. Zarian  
**Cc:** Gary Cooper  
**Subject:** RE: ASI v Sage [MT-C.FID625556]

Supplementing Gerry's email, I will be in Washington D.C. on Oct. 18; at hearing time my flight will be boarding or perhaps taking off, on the way back to Boise

So I'm hoping that, if nothing else, our request to move the hearing can be treated as 'professional courtesy.'

thanks

Steve

---

**From:** Gerry Husch  
**Sent:** Tuesday, October 08, 2013 3:27 PM  
**To:** John N. Zarian  
**Cc:** Steve Thomas; Gary Cooper  
**Subject:** ASI v Sage [MT-C.FID625556]

John,

I am told that late yesterday afternoon, Lisse Hall in your office signed for my firm's delivery of my paralegal's correspondence to you, Zilog's response to ASI's first set of requests for production, and the documents (on three CDs) produced by Zilog in response to ASI's requests.

Per your suggestion, Steve and I called Judge Neville's chambers, and Janet advised us that the Court's next available hearing date is November 15, at 2:30 pm.

As you, Steve and I discussed this afternoon, Steve and I are both out of town and unavailable for the hearing on your motion scheduled for October 18th. I will be in Orofino, where I have a hearing, deposition and witness preparation scheduled from October 14-18 and trial scheduled from October 21-25. However, I am available November 15, and if you would move your hearing to November 15, I would happily return the courtesy should you ever need one.

Thank you for your consideration of this request. A prompt response would be especially welcome.

Thanks again,

Gerry

---

GERALD T. HUSCH  
101 S. Capitol Blvd., 10th Floor (83702)  
PO Box 829  
Boise, Idaho 83701  
Direct Phone: 208.385.5406  
Direct Fax: 208.385.5406  
Email [gth@moffatt.com](mailto:gth@moffatt.com)  
web [www.moffatt.com](http://www.moffatt.com)  
*Moffatt Thomas*

## Steve Thomas

---

**From:** John N. Zarian <JZarian@parsonsbehle.com>  
**Sent:** Tuesday, October 08, 2013 5:57 PM  
**To:** Gerry Husch; Steve Thomas  
**Cc:** Gary Cooper; Kennedy K. Luvai; Cathy Pontak  
**Subject:** RE: ASI v Sage [MT-C.FID625556]

Gerry and Steve,

To confirm, it looks like the materials were in fact received after 5:00 p.m. yesterday, but no one has yet reviewed them.

Unfortunately, given the long delays in this matter and the timing of the request, I am not authorized to accommodate this request. I hope that one of you will be able to cover the hearing telephonically. Furthermore, I hope and expect that we will be able to grant additional courtesies in this case in this future.

Best regards,  
John



A Professional  
Law Corporation

---

**John N. Zarian | Attorney at Law**

960 Broadway Avenue, Suite 250 | Boise, Idaho 83706  
Main 208.562.4900 | Direct 208.562.4902 | Fax 208.562.4901  
[parsonsbehle.com](http://parsonsbehle.com) | vCard

---

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---

**From:** Gerry Husch [mailto:GTH@moffatt.com]  
**Sent:** Tuesday, October 08, 2013 3:27 PM  
**To:** John N. Zarian  
**Cc:** Steve Thomas; Gary Cooper  
**Subject:** ASI v Sage [MT-C.FID625556]

John,

I am told that late yesterday afternoon, Lisse Hall in your office signed for my firm's delivery of my paralegal's correspondence to you, Zilog's response to ASI's first set of requests for production, and the documents (on three CDs) produced by Zilog in response to ASI's requests.

Per your suggestion, Steve and I called Judge Neville's chambers, and Janet advised us that the Court's next available hearing date is November 15, at 2:30 pm.

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Thank you for your consideration of this request. A prompt response would be especially welcome.

Thanks again,

Gerry

GERALD T. HUSCH

101 S. Capitol Blvd., 10th Floor (83702)

PO Box 829

Boise, Idaho 83701

Direct Phone: 208.385.5406

Direct Fax: 208.385.5406

Email [gth@moffatt.com](mailto:gth@moffatt.com)

web [www.moffatt.com](http://www.moffatt.com)

*Moffatt Thomas*

---

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Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
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Boise, Idaho 83701  
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Facsimile (208) 385-5384  
srt@moffatt.com  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

vs.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**AFFIDAVIT OF GERALD T. HUSCH**

NO. \_\_\_\_\_ FILED \_\_\_\_\_ 4:20  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

**OCT 11 2013**

**CHRISTOPHER D. RICH, Clerk**  
**By STEPHANIE VIDAOK**  
**DEPUTY**

ORIGINAL

STATE OF IDAHO     )  
                              ) ss.  
County of Ada         )

GERALD T. HUSCH, having been duly sworn upon oath, deposes and states as follows:

1.       I am a member of the bar of the state of Idaho and am counsel of record for defendant Zilog, Inc. (hereinafter "Zilog") in the above-captioned case. I swear to and submit this affidavit in opposition to plaintiff's motion to compel dated August 30, 2013, and in support of Zilog's motion to vacate and reschedule the hearing on plaintiff's motion from October 18, 2013, to November 15, 2013.

**MOTION TO VACATE AND RESET OCTOBER 18 HEARING**

2.       Attached as Exhibit 1 to Zilog, Inc.'s Motion to Vacate and Reschedule Hearing, dated October 11, 2013, are true and correct copies of my October 8, 2013, e-mail to plaintiff's counsel (3:27 p.m.) as supplemented by that of my partner, Stephen R. Thomas, regarding the same subject at 3:32 p.m., together with the response by plaintiff's counsel on October 8, 2013, at 5:57 p.m. The statements in my and Mr. Thomas's e-mail are correct in that we have conflicts forcing us out of town on October 18, 2013, and that we and our client would prefer to make a personal presentation to the Court in opposition to the instant motion than try to appear via telephone. November 15, 2013, at 2:30 p.m. is, according to the Court's chambers, the next available time on which this matter could be heard. Given how long the case has been pending already and the rather deliberate pace at which plaintiff has prosecuted it thus far, a few additional weeks' delay ought not make a difference. This is especially true, where (as detailed below) Zilog produced to the plaintiff on October 7, 2013, a total of three disks containing some 26,949 electronic files of electronic documents.

## OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL

3. My client, Zilog, received plaintiff's March 8, 2013, subpoena shortly thereafter in March 2013. Following receipt, I had communications with plaintiff's counsel concerning that subpoena, including voicing objections to its over breadth, irrelevance, vagueness, and invasion of Zilog's trade secrets. Admittedly, I did use the term "concerns" in voicing some of those objections, although I also used the word "object"/"objectionable" at least twelve times. *See generally*, my March 25, 2013, letter to plaintiff's counsel (Zarian Declaration Ex. B), and Mr. Zarian's response on March 29, 2013 (*Id.*, Ex. C), in which he concedes that my letter stated "objections" to the subpoena. *Id.*, Ex. C at 1, ¶1, line 1.

4. At no time during the course of those communications with opposing counsel about the subpoena, and Zilog's objections to it, did the plaintiff or its counsel offer to "pay the reasonable cost of producing or copying the documents, electronically stored information or tangible things," as provided in Idaho Rule of Civil Procedure 45(b)(2).

5. On October 7, 2013, my firm produced on behalf of Zilog some 26,949 electronic files to the plaintiff. In order to achieve that substantial production — admittedly focused on the July 12, 2013, Rule 34 requests, which requests plaintiff concedes were substantially identical to those in the subpoena — Zilog devoted more than 50 hours of my paralegal Cheryl Dunham's time to this project. In addition, Zilog hired a California contract attorney named Ramon Lopez, who gathered and reviewed the responsive documents. We have worked extensively with Mr. Lopez in order to make the October 7, 2013, production referenced above. Mr. Lopez advised Mrs. Dunham on October 10, 2013, that he has expended at least 85 hours on this discovery matter.

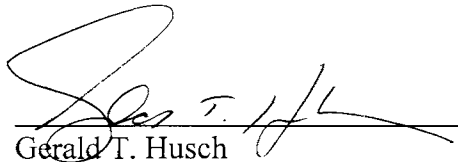


6. On October 7, 2013, Zilog served its Rule 34 responses to the instant July 12, 2013, discovery. A true and correct copy is attached hereto as Exhibit A. In addition, out of an abundance of caution, Zilog also served its Privilege Log. A true and correct copy of that log is attached hereto as Exhibit B. As the Court can see, the log represents a “placeholder” to document the fact that routine attorney-client communications between Moffatt Thomas and Zilog and/or between attorney Lopez and Zilog, incidental to the subpoena and subsequently the instant lawsuit and discovery, were not being produced. Rather, they were being withheld as privileged or they were confidential and facilitated rendering of legal service and legal advice. It is my belief that neither the subpoena nor the July 12, 2013, request for production intended to reach those communications, but the privilege log was served out of an abundance of caution. Moreover, I read the definition of “documents” in the subpoena and Rule 34 requests to include those documents no longer in the custody of Zilog because they “have been transferred from Zilog to its accountants, attorneys, or consultants.” That language, I believe, addressed a different issue: possession, custody, or control under Rule 34. In other words, it was and is my reading of the definition that any document otherwise discoverable that was no longer in Zilog’s possession, because it had been transferred away to a professional service contractor, should be recovered and produced if otherwise discoverable. The unusual use of the term “transferred” supported that interpretation, and differentiated it from normal “communications between attorney and client” such as email. At no time did Zilog or I intend to waive attorney-client privilege or attorney work product relative to normal communications between client and counsel made confidentially and with the intent of facilitating the rendition of legal services. Zilog does not waive and has not waived its objections to producing anything bearing those privileges.

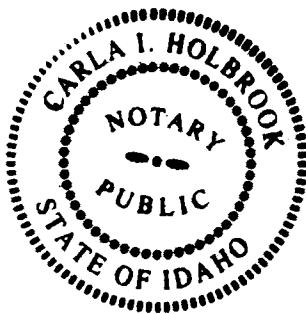
7. On or about May 9, 2013, in an effort to resolve the entire dispute under Rule 408 Idaho Rules of Evidence, including the document requests then contained in the Subpoena but now substantially converted into the requests for production in Rule 34, Zilog's general counsel, Dan Eaton, travelled to Boise, Idaho in order to meet with plaintiff's principals. Mr. Zarian and I also attended that meeting which occurred on May 9, 2013, at the offices of Parsons, Behle, & Latimer. Although the matter did not resolve, that rather extraordinary effort was in fact undertaken by Zilog in good faith in an attempt to resolve this matter.

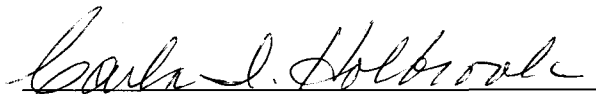
8. Zilog's opposition papers may need to be supplemented, as my paralegal has only just received approximately 2,000 additional electronic files from Mr. Lopez, which may contain responsive information. Between now and the hearing, those files will be reviewed by my firm to determine whether they are responsive, non-privileged documents. If they are, they will be produced.

Further your affiant sayeth naught.

  
Gerald T. Husch

SUBSCRIBED AND SWORN to before me this 11th day of October, 2013.



  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise, Idaho  
My Commission Expires 11-23-2015

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2013, I caused a true and correct copy of the foregoing **AFFIDAVIT OF GERALD T. HUSCH** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

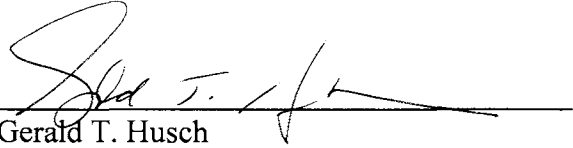
☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
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*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
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Boise, ID 83706  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

  
Gerald T. Husch

# **EXHIBIT A**

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Facsimile (208) 385-5384  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
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Plaintiff,

v.

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Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
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Case No. CV OC 1123344

**DEFENDANT ZILOG, INC.'S  
RESPONSES TO PLAINTIFF'S FIRST  
SET OF REQUESTS FOR  
PRODUCTION**

**DEFENDANT ZILOG, INC.'S RESPONSES TO PLAINTIFF'S FIRST SET  
OF REQUESTS FOR PRODUCTION - 1**

Client:2051049.4

000558

COMES NOW Defendant Zilog, Inc., by and through undersigned counsel of record, and responds to Plaintiff's First Set of Requests for Production as follows:

**GENERAL OBJECTIONS TO ASI'S REQUESTS FOR PRODUCTION**

Zilog objects to ASI's discovery requests insofar as they seek discovery of information that is protected by the attorney-client privilege and therefore outside the scope of permissible discovery as set forth in Idaho Rule of Civil Procedure 26(b)(1). Furthermore, Zilog objects to ASI's discovery requests insofar as they seek discovery of information that is protected from discovery by virtue of the work product doctrine and/or Idaho Rule of Civil Procedure 26(b)(3). In addition, Zilog objects to ASI's definition of the "RELEVANT TIME PERIOD" as the time between January 1, 2009, and July 12, 2013 (the date of Plaintiff's First Set of Requests for Production) because ASI's definition of the "RELEVANT TIME PERIOD" includes periods of time during which all of the INDIVIDUALS were still employed by Zilog and none of the INDIVIDUALS was employed by ASI. ASI's discovery requests are overbroad insofar as they seek information regarding the work that the INDIVIDUALS performed as Zilog's employees (which was before they became employees of ASI), the INDIVIDUALS' employment relationships, agreements or understandings with Zilog regarding their employment with Zilog, communications between the INDIVIDUALS, as Zilog employees, and other Zilog employees, regarding their employment with Zilog or other matters not relevant to Sage or ASI, and Zilog's payment of the INDIVIDUALS's wages or other compensation for their services as Zilog employees. ASI's discovery requests seeking information regarding the facts and circumstances surrounding the INDIVIDUALS' employment with Zilog do not seek information relevant to the subject matter of this action, are not reasonably calculated to lead to the discovery of admissible evidence, and are therefore outside the scope of permissible discovery as set forth

in Idaho Rule of Civil Procedure 26(b)(1). Furthermore, ASI's selection of January 1, 2009, as the beginning of the so-called "RELEVANT TIME PERIOD" is arbitrary.

Zilog submits that the "RELEVANT TIME PERIOD" should not include any period of time when an INDIVIDUAL was still employed by Zilog and not employed by ASI. Therefore, Zilog has redefined the "RELEVANT TIME PERIOD" as the time between March 7, 2009, which is the day after the last date that the last two of the INDIVIDUALS were employed by Zilog, and July 12, 2013, which is the date of Plaintiff's First Set of Requests for Production, and Zilog has employed that definition of the "RELEVANT TIME PERIOD" in drafting Defendant Zilog, Inc.'s Responses to Plaintiff's First Set of Requests for Production and in producing documents in response to Plaintiff's First Set of Requests for Production.

Without waiving these objections, Zilog produces documents and things herewith as Z000001 through Z006101.

#### **DOCUMENT REQUESTS**

REQUEST FOR PRODUCTION NO. 1: All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and SAGE, on the other hand.

RESPONSE NO. 1: Please see Zilog's General Objections to ASI's Discovery Requests above ("General Objections"). In addition, ZILOG objects to this request, insofar as it is not limited in time, not even to the "RELEVANT TIME PERIOD" as defined by ASI itself. Without waiving these objections, Zilog states that, based upon its reasonable good faith search efforts to date, ZILOG believes it has produced all requested documents created during the "RELEVANT TIME PERIOD," as defined by Zilog, other than documents protected by the attorney-client or work product privilege.

REQUEST FOR PRODUCTION NO. 2: All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and the INDIVIDUALS, on the other hand.

RESPONSE NO. 2: See Zilog's General Objections. In addition, Zilog objects to this request because this request uses the term "business relationship" without stating whether that term is to include an employment relationship. Without waiving these objections, Zilog states that, based upon its reasonable good faith search efforts to date, ZILOG believes it has produced all requested documents created during the "RELEVANT TIME PERIOD," as defined by Zilog, other than documents protected by the attorney-client or work product privilege.

REQUEST FOR PRODUCTION NO. 3: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any white paper, bid, proposal, or request for quotation between ZILOG, on the one hand, and SAGE and/or the INDIVIDUALS, on the other hand.

RESPONSE NO. 3: Please see Response No. 1 above.

REQUEST FOR PRODUCTION NO. 4: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any agreement or understanding between ZILOG, on the one hand, and SAGE or the INDIVIDUALS, on the other hand.

RESPONSE NO. 4: Please see Response No. 1 above.

REQUEST FOR PRODUCTION NO. 5: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between ZILOG or any of its employees or agents, on the one hand, and SAGE or the INDIVIDUALS or any of their employees or agents, on the other hand.

RESPONSE NO. 5: Please see Response No. 1 above. In addition, Zilog objects to this request on the following grounds: (a) The request is unduly burdensome, because the



request seeks discovery of communications involving any employee or agent of SAGE or any INDIVIDUAL, and Zilog is not certain it knows the identity of all of the employees and agents of SAGE or the INDIVIDUALS; (b) The request is overly broad because it seeks information that is not relevant to the subject matter of this action, or reasonably calculated to lead to the discovery of admissible evidence, and therefore seeks discovery regarding matters outside the scope of discovery as defined in Idaho Rule of Civil Procedure 26(b)(1); and (c) The request is unduly burdensome in that it seeks discovery of information from sources that cannot be reasonably searched by Zilog, such as the local drives on its employees' computers and/or data stored on a legacy system. Without waiving these objections, Zilog states that based upon its reasonable good faith search efforts, Zilog believes that it has produced all documents that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between ZILOG or any of its employees or agents, on the one hand, and SAGE or the INDIVIDUALS, on the other hand, created during the "RELEVANT TIME PERIOD" as defined by Zilog, other than documents protected by the attorney-client or work product privilege.

REQUEST FOR PRODUCTION NO. 6: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between Rick White, on the one hand, and SAGE, ZILOG, or the INDIVIDUALS or any of their employees or agents, on the other hand.

RESPONSE NO. 6: Please see Zilog's General Objections. In addition, Zilog objects to this request because it is unlimited as to time or subject and seeks discovery outside the permissible scope of discovery under Idaho Rule of Civil Procedure 26(b)(1). It seeks discovery of each and every communication between Rick White and any other ZILOG employee (whether or not the employee is one of the Individuals) that occurred at any time

during the many years Mr. White was employed by Zilog, regarding any topic, irrespective of the topic's lack of any relevance to the subject matter of this lawsuit. Without waiving these objections, based upon its reasonable good faith search efforts to date, ZILOG believes it has produced all requested communications created or in effect during the "RELEVANT TIME PERIOD," as defined by Zilog, other than communications protected by the attorney-client or work product privilege and communications between Rick White and another ZILOG employee or agent (except that ZILOG has produced communications between Rick White and another ZILOG employee or agent if such communications occurred during the "RELEVANT TIME PERIOD," as defined by Zilog, and contain the word "American Semiconductor," the acronym "ASI," or the name of any of the INDIVIDUALS, "SAGE" or "Staab").

REQUEST FOR PRODUCTION NO. 7: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer to ASI or any of its employees or agents.

RESPONSE NO. 7: Please see Zilog's General Objections. In addition, Zilog objects to this request because the subject matter of the request is not limited to the subject matter of this action. Thus, Zilog objects to this request because it seeks information that is not relevant to the subject matter of the action, or reasonably calculated to lead to the discovery of admissible evidence, and therefore seeks discovery regarding matters outside the scope of discovery as defined in Idaho Rule of Civil Procedure 26(b)(1). Furthermore, Zilog objects to this request as unduly burdensome, because, for example, the request seeks discovery of communications that refer to any ASI employee or agent, and Zilog does not know the identity of all of ASI's employees and agents. Similarly, the request is unduly burdensome in that it

seeks discovery of information from sources that cannot be reasonably searched by Zilog, such as the local drives on its employees' computers and/or data stored on a legacy system.

Without waiving these objections, Zilog states that Zilog has asked Zilog's current employees, including all of its current employees who worked on the project in question, to give to Zilog's counsel all documents that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG or any of its employees or agents, during the "RELEVANT TIME PERIOD"(as defined by Zilog) that refer to ASI or any of the INDIVIDUALS or Doug Hackler or Dale Wilson, and Zilog further states that it has produced or will produce all such documents given to Zilog's counsel, other than any such documents that are protected from discovery by the attorney-client or work product privileges.

REQUEST FOR PRODUCTION NO. 8: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer SAGE or the INDIVIDUALS or any of their employees or agents.

RESPONSE NO. 8: Please see Response No. 1 above.

REQUEST FOR PRODUCTION NO. 9: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any invoice or statement of services received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents.

RESPONSE NO. 9: Please see Response No. 1 above.

REQUEST FOR PRODUCTION NO. 10: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any payment of any kind, in any form, made by Zilog,

during the RELEVANT TIME PERIOD, to SAGE or the INDIVIDUALS or any of their employees or agents.

RESPONSE NO. 10: Please see Response No. 1 above.

REQUEST FOR PRODUCTION NO. 11: All DOCUMENTS that evidence, reflect, refer to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.

RESPONSE NO. 11: Please see Zilog's General Objections. In addition, Zilog objects to this request because Zilog does not know for certain the identity of all of the employees or agents of SAGE or the INDIVIDUALS during the "RELEVANT TIME PERIOD" as defined by ASI. Without waiving these objections, Zilog states that it believes, based upon its reasonable good faith search efforts to date, that Zilog has produced all requested documents, other than documents protected by the attorney-client or work product privilege and documents related to employment services that the INDIVIDUALS provided or otherwise rendered to Zilog during the "RELEVANT TIME PERIOD," as defined by Zilog.

REQUEST FOR PRODUCTION NO. 12: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS relating to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.

RESPONSE NO. 12: Please see Zilog's General Objections. In addition, Zilog objects to this request because Zilog does not know for certain the identity of all of the employees or agents of SAGE or the INDIVIDUALS during the "RELEVANT TIME PERIOD" as defined by ASI. Without waiving these objections, Zilog states that it believes, based upon its reasonable good faith search efforts to date, that Zilog has produced all requested documents,

other than documents protected by the attorney-client or work product privilege and documents related to payment for employment services that the INDIVIDUALS provided or otherwise rendered to Zilog during the "RELEVANT TIME PERIOD," as defined by Zilog.

REQUEST FOR PRODUCTION NO. 13: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design data generated in connection with any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents, design [sic] including without limitation any and all such design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs.

RESPONSE NO. 13: Please see Response No. 1 above.

REQUEST FOR PRODUCTION NO. 14: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design documents and/or design files received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents, including with limitation any and all such design schedules, design and device specifications, circuit schematics, feature sets, netlists, RLT [sic] design files, test vectors, design rules, electrical rules, layout views. GDSII files, design/layout scripts, VCD data files, verification files, simulations, simulation results (graphical and test) and related information, and any documentation of any kind, name or nature, electronic or otherwise, containing information contained in a design document or design file.

RESPONSE NO. 14: Please see Response No. 1 above.

REQUEST FOR PRODUCTION NO. 15: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any repository logs for designs and design changes received from SAGE, or from any third party intellectual property providers recommended by SAGE.

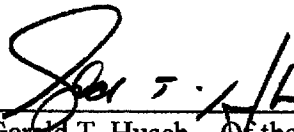
RESPONSE NO. 15: Please see Response No. 1 above.

REQUEST FOR PRODUCTION NO. 16: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any all schematics, RTL, gds, specifications, test benches, simulation reports, and physical verification reports and related information that were modified in any way by SAGE.

RESPONSE NO. 16: Please see Response No. 1 above.

DATED this 7th day of October, 2013.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 2013, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG, INC.'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

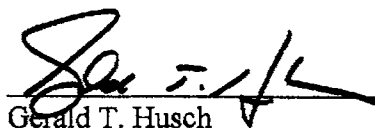
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
Gerald T. Husch

# **EXHIBIT B**



## DEFENDANT ZILOG, INC.'S PRIVILEGE LOG

American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.

Case No. CV OC 1123344

October 7, 2013

MTBR&F File No. 25332.0000

DATE	TO	FROM	TYPE PRIVILEGE*	GENERAL DESCRIPTION
Various	Zilog employees	Zilog in-house counsel	AC, WP	Communications between Zilog in-house counsel and Zilog employees for the purposes of facilitating the rendition of professional legal services, in anticipation of litigation or preparation for trial.
Various	Zilog in-house counsel	Zilog employees	AC, WP	Communications between Zilog in-house counsel and Zilog employees for the purposes of facilitating the rendition of professional legal services, in anticipation of litigation or preparation for trial.
Various	Zilog in-house counsel	Moffatt Thomas	AC, WP	Communications between Zilog in-house counsel and Moffatt Thomas for the purposes of facilitating the rendition of professional legal services, in anticipation of litigation or preparation for trial.
Various	Moffatt Thomas	Zilog in-house counsel	AC, WP	Communications between Zilog in-house counsel and Moffatt Thomas for the purposes of facilitating the rendition of professional legal services, in anticipation of litigation or preparation for trial.
Various	Moffatt Thomas	Moffatt Thomas	AC, WP	Communications between Moffatt Thomas attorneys for the purposes of facilitating the rendition of professional legal services, in anticipation of litigation or preparation for trial.

\*KEY:

AC - Attorney-Client Privilege.

WP - Attorney-Work Product Privilege under the common law and/or Idaho Rule of Civil Procedure 26(b)(3).

Navie  
Janet  
10-15-13

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
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srt@moffatt.com  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

vs.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED 9:20 P.M.

OCT 11 2013

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAOK  
DEPUTY

Case No. CV OC 1123344

**DEFENDANT ZILOG, INC.'S  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S MOTION  
TO COMPEL**

ORIGINAL

DEFENDANT ZILOG, INC.'S MEMORANDUM IN OPPOSITION TO PLAINTIFF  
AMERICAN SEMICONDUCTOR, INC.'S MOTION TO COMPEL - 1

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## I. INTRODUCTION

Defendant Zilog, Inc. (hereinafter "Zilog") opposes plaintiff's motion to compel because Zilog has now produced 26,949 electronic files to the plaintiff, such that the motion is moot. In addition, plaintiff has been on notice of Zilog's objections to the same questions here at issue since March 25, 2013. Although the instant motion focuses solely on plaintiff's Rule 34 requests dated July 12, 2013, plaintiff claims that this current dispute is "nearly six months" old (ASI Mem. at 2), thereby acknowledging the link between the Rule 34 requests sought to be compelled by this motion and plaintiff's March 8, 2013 subpoena, which had been served on Zilog as a nonparty. Since Plaintiff failed to comply with Rule 45, Idaho Rules of Civil Procedure, relative to said subpoena and received Zilog's objections thereto within approximately two weeks of its being served, the "nearly six months" cannot be charged against Zilog now.

Zilog, on the other hand, has made a substantial effort to resolve this matter, first by flying its general counsel to Boise to negotiate in May 2013 a global solution under Rule 408 — admittedly, an effort which failed — and then by retaining a dedicated contract attorney in California to collect, review, and produce the nearly 27,000 files, thereby expending some 85 hours of attorney time plus more than 50 hours of paralegal time. *See* Affidavit of Gerald T. Husch ("Husch Aff."), ¶ 5.

### A. Plaintiff Has Suffered No Prejudice From a Slight Additional Delay In Document Production.

Plaintiff recently received a production of nearly 27,000 electronic files responsive to the requests for production and, thus, has received the information which it requested. This motion is moot. The effort to collect, review, and produce those files has been

massive, exceeding more than 135 person hours (Husch Aff. ¶ 5). This case has been pending now for more than 22 months, at least 17 months of which Zilog has been a named, but unserved defendant, so the fact that some seven additional weeks may have passed (from August 12, 2013, to October 7, 2013) is of no real harm to plaintiff.

Plaintiff moves on the Rule 34 requests dated July 12, 2013, only, and not on a March 8, 2013, subpoena issued to Zilog, then a non-party. Yet plaintiff would also like to claim the benefit of the time spent in the earlier subpoena phase (March – June 2013), expressly acknowledging that the request for production “tracked the document requests incorporated into the subpoena and served on March 8, 2013.” Declaration of John Zarian (“Zarian Decl.”) at 3, ¶ 11. Plaintiff cannot have his cake and eat it, too. The motion is not predicated on the subpoena, which became moot once Zilog was served with Summons and Complaint on or about May 30, 2013. Nonetheless, plaintiff is correct that the requests in both the subpoena and the Rule 34 requests are substantially the same. With that in mind, the plaintiff has been on notice of Zilog’s concerns about that same basic discovery since March 25, 2013 (Zarian Decl. Ex. D). Notwithstanding the polite and civil language then used by Zilog’s counsel (“concerns”), that document provided plaintiff with a list of Zilog’s detailed objections. Indeed, the March 25, 2013, letter by Zilog counsel Husch used the concept or term “objection” or “objectionable” at least 12 different times. Moreover, plaintiff’s attorney’s response, dated March 29, 2013, opened with an acknowledgement that the March 25, 2013, Husch letter articulated “your objections to the subpoena duces tecum . . . .” Zarian Decl. Ex. C at 1, ¶ 1. Similarly, when the focus changed from subpoena to Rule 34 requests, Zilog counsel Husch advised plaintiff, by e-mail dated August 19, 2013, that “Zilog has not waived its objections to ASI’s discovery requests . . . [which] are essentially the same as those that Zilog made in response to ASI’s

subpoena duces tecum, and ASI has been aware of Zilog's objections for over four months."

Zarian Decl. Ex. G ¶ 2.

**B. During the Subpoena Phase, Plaintiff Lacked Clean Hand.**

Plaintiff concedes that its March 8 subpoena is the predicate antecedent of the Rule 34 requests now the basis of this motion. Yet that subpoena failed to satisfy Rule 45. That subpoena, like the instant discovery, was enormously broad and overreaching, asking for what ultimately turned out to be about 27,000 different electronic files. Now, as the *Husch Aff.* shows, Zilog has spent over 135 person hours responding to substantially the same discovery *Husch Aff.* ¶ 5. Yet not once during the subpoena phase did plaintiff or its counsel offer to pay the cost of producing or copying the requested documents. *Id.*, ¶ 4. This deficiency violates Rule 45(b)(2), Idaho Rules of Civil Procedure, which expressly provides that, "[t]he party serving the subpoena shall pay the reasonable cost of producing or copying the documents, electronically stored information or tangible things." Zilog reserves its rights in connection with these costs under Rule 54, Idaho Rules of Civil Procedure, and other applicable law.

Under all these facts and circumstances, it would be inappropriate for plaintiff to benefit from the March 8, 2013, subpoena when it violated the applicable law of Rule 45, and was on notice within 17 days that the recipient Zilog had real and substantial objections to the requests. That Zilog counsel used civility in his choice of words – "concerns" — ought not be charged against Zilog or its counsel. Plaintiff knew very well that those "concerns," including 12 specific objections, were, in fact, "objections" within the meaning of the discovery rules.

Zarian Decl. Ex C at 1 ¶ 1 Line 1.

**C. Attorney-Client and Attorney Work Product Privileges.**

Plaintiff, while citing no controlling Idaho authority, urges this Court to ignore the privilege log served by Zilog on October 7, 2013, and to deem “waived” certain attorney-client communications. As that log reveals it was served out of an abundance of caution and to make a clear record with the Court and opposing counsel. Husch Aff. Ex. B. To the best of Zilog’s counsel’s knowledge, no substantive documents literally requested by the underlying discovery have been withheld as privileged. Rather, Zilog counsel simply wishes to make clear that the routine communications between its lawyers and client, responding to the instant lawsuit and discovery, are not being produced. Nor should they be produced, as they are not relevant to the dispute. Rather, they are necessary and proper for the Court and counsel to function. Zilog counsel assumes, therefore, that movant’s counsel misunderstands the nature of the privilege log and the documents which has been withheld. Rule 26 expressly limits the scope of discovery to that which is “not privileged.”

Moreover, and in any event, the definition of “document” in this regard is vague because it provides for writings and records “that have been transferred from Zilog to its accountants, attorneys or consultants . . . .” *Id.* at 2, ¶ 1. To the best of counsel’s knowledge, no such documents have been physically transferred from Zilog to other parties in the sense of boxes or disks of documents being shipped to a third party in an effort to avoid the reach of a subpoena, or of plaintiff’s Rule 34 requests. In other words, the language to which plaintiff implicitly points goes to “possession, custody and control” issues, and does not reach the normal communications by and between client and counsel doing their job to respond to discovery.

Plaintiff would have the Court believe that it has no discretion on the matter of waiver, that waiver is automatic whenever the queried party’s response does not include the

magic word of “privilege” within 30 days of service. The language of the rule provides otherwise, however. The rule contemplates service of a response within 30 days—here Zilog did so in the antecedent subpoena in a mere 17 days, noting objections. Where the initiating party is dissatisfied with the responses, including objections, then it “may move for an Order under Rule 37(a) with respect to any objection or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.” I.R.C.P. 34(b)(2). Only the Court has the power to decide whether the privileged documents were truly within the scope of the request and relevant under Rule 26; only the Court may deem an objection “waived.” “Waiver” is not an automatic process as it arguably is, for example, under Requests for Admission. *See* I.R.C.P. 36(a) (“Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Court may allow, the party . . . serves . . . a written answer or objection . . .”). The italicized language of Rule 36 does not appear in Rule 34. Moreover, and any event, even Rule 36 grants the Court discretion to allow a party responding to a Rule 36 request more than the 30 days stated. A fortiori, the Court has discretion to allow extra time to a party responding to a Rule 34 request additional time as well.

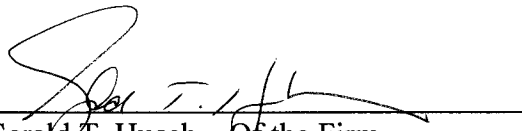
Attorney-client privilege and attorney work product privilege are two of the most essential privileges to the functioning of the American judicial system. Plaintiff cites no authority for its proposition that, under circumstances such as these, plaintiff is entitled to routine communications between Zilog and its counsel dealing with the instant claim, subpoena, and lawsuit. Zilog has made clear that it never intended to waive such privileges. *Husch Aff.* ¶ 6.

## II. CONCLUSION

For the foregoing reasons, plaintiff's motion to compel has become moot by virtue of the massive, good faith efforts of Zilog to comply with the Rule 34 request for production, Zilog's October 7, 2013, production of nearly 27,000 electronic files, and the fact that plaintiff is not prejudiced having received prior notice of Zilog's objections to the discovery at issue since March 25, 2013.

DATED this 11th day of October, 2013.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2013, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG, INC.'S OPPOSITION TO PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S MOTION TO COMPEL** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
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Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

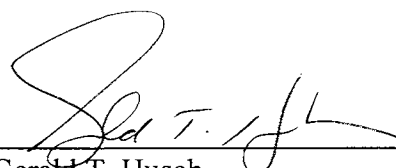
☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

Russell G. Metcalf  
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*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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\_\_\_\_\_  
Gerald T. Husch

ORIGINAL

NO. 927 FILED  
A.M. PM

OCT 15 2013

CHRISTOPHER D. RICH, Clerk  
By ELYSHIA HOLMES  
DEPUTY

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Kennedy K. Luvai, ISB#9924  
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Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 112334<sup>4</sup>

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S OPPOSITION TO ZILOG'S  
MOTION TO VACATE AND RESET  
HEARING ON PLAINTIFF'S  
MOTION TO COMPEL**

AMERICAN SEMICONDUCTOR, INC.'S OPPOSITION TO ZILOG'S MOTION TO  
VACATE AND RESET HEARING ON PLAINTIFF'S MOTION TO COMPEL

4821-9228-9814.1

000579

## OPPOSITION

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, submits the following memorandum in opposition to defendant and counterclaimant Zilog, Inc.'s ("Zilog") Motion to Vacate and Reset October 18, 2013 Hearing on Plaintiff's Motion to Compel (the "Motion to Vacate").

### **A. ZILOG HAS BEEN AWARE OF THE HEARING DATE SINCE AUGUST**

As reflected in the court docket, ASI filed the notice of hearing on its motion to compel against Zilog on August 30, 2013. Furthermore, as set forth in the certificate of service, ASI served that notice and the underlying motion on Zilog, by e-mail and by U.S. Mail, the same day the notice was filed. Thus, Zilog has been on notice *since August 30, 2013* that the pending motion to compel would be heard on October 18, 2013.

Nevertheless, it was not until over *five weeks* later – on October 8, 2013 – that Zilog's counsel first communicated any concern regarding the October 18, 2013 hearing. Thus, the request for a new hearing date was made only *10 days* before the hearing. To the extent counsel had "long extant conflicts," this five-week delay in notifying ASI was not reasonable, under the circumstances. Zilog does not provide ASI or the Court with any adequate explanation for the delay, or why the hearing on a fairly routine discovery motion cannot be covered telephonically or by another lawyer at the firm.

Zilog's request for a further delay comes against a backdrop of ongoing delays in responding to discovery requests (which prompted ASI's motion to compel in the first place). Under the circumstances, ASI simply could not agree to a further delay in resolving discovery issues that continue to impede the parties' litigation of this case on the merits.

**B. ZILOG'S COUNSEL CAN PARTICIPATE IN THE HEARING BY PHONE**

As part of its response to Zilog's request that the October 18, 2013 hearing be vacated, ASI proposed that counsel appear telephonically. To be sure, Zilog represents that Mr. Thomas will be boarding a plane to Boise at the time of the hearing and that Mr. Husch will be out of town preparing for trial. [Motion to Vacate, at p. 2]. However, Zilog does not contend that Mr. Husch has other hearings or court proceedings at the time set for the October 18, 2013 hearing that would completely preclude his appearance telephonically. Moreover, Zilog does not explain what prejudice, if any, it would suffer if counsel appeared by telephone rather than in-person.

Given the unresolved discovery matters pending as part of ASI's motion to compel, any further delays would simply continue to frustrate the resolution of this case on the merits.

**C. THE PENDING MOTION TO COMPEL IS NOT MOOT**

Finally, Zilog's contention that the motion to compel is somehow "moot" because it produced "arguably responsive" records barely *10 days* prior to the hearing is misplaced. (Of course, Zilog does not explain why it failed to produce any documents whatsoever for at least seven months after the original subpoena was served or for five weeks after the motion was first filed.)

ASI is presently in the process of reviewing documents to determine whether Zilog actually complied with some or all of ASI's long overdue discovery requests. Given the timing of the production, ASI submits that the motion to compel should be granted and not frustrated on the merits by Zilog's dumping of some documents, without explanation, on the eve of a hearing. Indeed, because Zilog failed to serve objections or otherwise respond to the document requests in a timely fashion, it has waived all objections and those objections should be overruled. (Zilog has *not* certified that it has produced all responsive records without objection.)

Under the circumstances, ASI's pending motion is not moot.

**CONCLUSION**

For the foregoing reasons, the Court should deny Zilog's motion to vacate the October 18, 2013 hearing.

DATED October 15, 2013.

PARSONS BEHLE & LATIMER

By



---

Kennedy K. Luvai  
Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of October, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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srt@moffatt.com



Kennedy K. Luvai

NO. \_\_\_\_\_ FILED \_\_\_\_\_ 2:18  
AM P.M.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

OCT 16 2013

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY; WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

Case No. CV-OC-2011-23344

MEMORANDUM DECISION  
AND ORDER

GRANTING DEFENDANT ZILOG'S MOTION  
TO VACATE AND RESET HEARING ON  
PLAINTIFF'S MOTION TO COMPEL

This matter came before the Court regarding Defendant Zilog's Motion to Vacate and Reset October 18, 2013 Hearing on Plaintiff's Motion to Compel filed October 11, 2013. Oral argument was not requested.

DISCUSSION

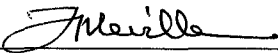
The decision to grant or deny a motion for continuance is within the discretion of the district court. *State v. Thorngren*, 149 Idaho 729, 736, 240 P.3d 575, 582 (2010). Defendant Zilog requests a continuance on the basis that both of the attorneys working on its case will be out of town on October 18, 2013, and that a recent production of approximately 27,000 electronic files may make moot certain portions of the Plaintiff's motion. The Plaintiff opposes the motion to continue, arguing persuasively that Defendant Zilog was on notice of the hearing date for approximately five weeks before it filed its

1 motion to continue, and that no explanation has been provided for that delay. In addition, no explanation  
2 has been given for why another attorney at the firm cannot attend the hearing, or why the hearing cannot  
3 be attended telephonically (which is different from a mere preference to attend in person). However, in  
4 light of the recent production of a large number of files, the Court finds that it is in the interest of the  
5 Court and all of the parties to delay the hearing for a short period of time so that the Plaintiff may have  
6 an opportunity to review the new discovery and to narrow the issues presented in its Motion to Compel,  
7 if appropriate.  
8

9 **CONCLUSION**

10 For the foregoing reasons, this Court GRANTS Defendant Zilog, Inc's Motion to Vacate and  
11 Reset October 18, 2013 Hearing on Plaintiff's Motion to Compel. The hearing originally scheduled for  
12 October 18, 2013 is hereby vacated and reset for November 15, 2013 at 2:30 p.m. AND IT IS SO  
13 ORDERED.  
14

15 Dated this 16<sup>th</sup> day of October, 2013.  
16

17  
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19 Thomas F. Neville  
20 District Judge  
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**CERTIFICATE OF MAILING**

I hereby certify that on this 16 day of October, 2013, I mailed (served) a true and correct copy of the within instrument to:

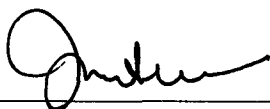
Stephen R. Thomas  
Gerald T. Husch  
MOFFAT, THOMAS, BARRETT, ROCK & FIELDS, CHTD.  
101 S. Capitol Blvd., 10<sup>th</sup> Floor  
P.O. Box 829  
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Kennedy K. Luvai  
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960 Broadway Ave., Suite 250  
Boise, ID 83706

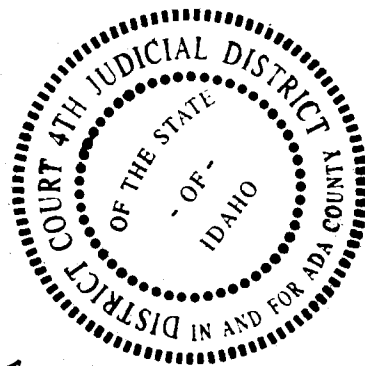
Gary L. Cooper  
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Pocatello, ID 83205-4229

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P.O. Box 385  
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CHRISTOPHER D. RICH  
Clerk of the District Court  
Ada County, Idaho



Deputy Clerk



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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

NO. \_\_\_\_\_  
FILED 4:35  
A.M. P.M.

DEC 27 2013

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS, GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S  
RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC.**

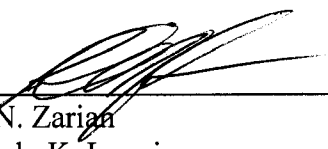
Pursuant to Rule 37 of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") hereby respectfully renews its motion to compel filed on August 30, 2013, as appropriately narrowed and/or clarified in light of defendant Zilog, Inc.'s ("Zilog") subsequent (untimely) production of documents and "native" electronic files on October 7, 2013.

In connection with this renewed motion, ASI seeks an order directing Zilog to re-designate its October 7, 2013 production and any subsequent productions in a manner consistent with the protective order in place in this action. In addition, with respect to certain "native" electronic files produced on October 7, 2013, ASI submits that Zilog should be directed to make available the necessary specialized software to allow counsel for ASI to review such files.

In support of the foregoing motion, ASI relies upon this motion, the accompanying memorandum of points and authorities, the accompanying Declaration of Kennedy K. Luvai, the pleadings and records on file in this matter, all matters of which the Court may take judicial notice, such matters as may be presented by counsel at or prior to any hearing, and upon such other evidence or argument as may be presented to or considered by the Court prior to any ruling on this motion.

DATED this 27th day of December, 2013.

PARSONS BEHLE & LATIMER

By   
John N. Zarigan  
Kennedy K. Luvai  
*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

**PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO  
COMPEL AGAINST DEFENDANT ZILOG, INC. -2-**

000588

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27th day of December, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
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Pocatello, ID 83205-4229  
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Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: gary@cooper-larsen.com

Russell G. Metcalf  
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Facsimile: (208) 337-4854  
Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: rmetcalf@cableone.net

Gerald T. Husch  
Stephen R. Thomas  
MOFFATT THOMAS BARRETT ROCK  
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Attorneys for Defendant Zilog, Inc.

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: gth@moffatt.com srt@moffat.com

\_\_\_\_\_  
John N. Zarian

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
PARSONS BEHLE & LATIMER  
960 South Broadway Avenue, Suite 250  
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KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS, GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

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RELATED COUNTER ACTIONS

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ORIGINAL

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:35

DEC 27 2013

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

**DECLARATION OF KENNEDY K.  
LUVAI IN SUPPORT OF PLAINTIFF  
AMERICAN SEMICONDUCTOR,  
INC.'S RENEWED MOTION TO  
COMPEL AGAINST DEFENDANT  
ZILOG, INC.**

I, Kennedy K. Luvai, declare as follows:

1. I am duly licensed to practice law in the State of Idaho and before this Court, and I am an attorney with the law firm of Parsons Behle & Latimer. I am one of the attorneys of record for plaintiff American Semiconductor, Inc. ("ASI") in the above-referenced action. I make this declaration based upon my own personal knowledge and, if called upon, could and would testify competently as to the truth of the factual matters contained herein.

2. I submit this declaration in support of ASI's Renewed Motion to Compel Against Defendant Zilog, Inc., filed concurrently herewith.

3. On August 30, 2013, after having given defendant Zilog, Inc. ("Zilog") nearly *six months* to comply with discovery requests seeking production of records relevant to this action, ASI filed a motion to compel. The hearing on ASI's motion to compel was noticed for October 18, 2013.

4. On October 7, 2013, just days before the noticed hearing date, Zilog produced 5,922 pages of individually Bates-labeled documents and approximately 25,000 "native" electronic files.

5. *Each and every one (i.e., 100 percent)* of the approximately 25,000 "native" electronic files were designated wholesale as "CONFIDENTIAL ATTORNEYS' EYES ONLY" (hereinafter, "AEO"). Similarly, approximately *93 percent* of 5,922 pages (*i.e., 5,506 of 5,922*) that were individually Bates-labeled documents were designated AEO. In sum, *approximately 99 percent* of the documents and "native" electronic files produced by Zilog on October 7, 2013 were designated AEO and designated for inspection by attorneys only.

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF PLAINTIFF  
AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC. -2-**

5. My office's review of Zilog's October 7, 2013 production has been hampered, in part, by the blanket over-designation of nearly *99 percent* of that production as AEO. Any communication between my office and ASI regarding the nature of 99 percent of Zilog's October 7, 2013 production is precluded under the terms of the protective order now in place.

6. My office's review of the "native" electronic files has been further frustrated by the fact that a significant portion of those files (all designated AEO) were produced by Zilog without providing my office with access to the specialized software necessary to access them.

7. On December 2, 2013, in an attempt to resolve our problems with the October 7, 2013 production, I sent a letter to opposing counsel outlining ASI's concerns. In summary, ASI articulated its concerns regarding: (a) incompleteness of Zilog's production, particularly with regard to referenced attachments to e-mails that were apparently not produced; (b) the impropriety of Zilog's blanket use of confidentiality designations, especially the more restrictive AEO designation; (c) Zilog's failure to appropriately Bates label or identify the approximately 25,000 "native" files it produced; and (d) my office's inability to review various AEO electronic files which require specialized software in Zilog's possession. I requested a response on or before December 9, 2013. Attached hereto as **Exhibit A** is a true and correct copy of my December 2, 2013 letter.

8. On December 11, 2013, I received a letter from Zilog's counsel. Rather than provide a substantive response, counsel stated that he had other pressing business matters and that he would provide a substantive response "within the next week." Attached hereto as **Exhibit B** is a true and correct copy of counsel's December 11, 2013 letter.

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF PLAINTIFF  
AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC. -3-**

9. In response to counsel's letter and given ASI's concerns regarding Zilog's history of delay in this action, I responded by granting Zilog the courtesy of an extension until December 17, 2013 to provide a substantive response. Attached hereto as **Exhibit C** is a true and correct copy of my December 13, 2013 letter providing that requested extension of time.

10. Counsel did not provide a substantive response by December 17, 2013 as promised. Instead, at the close of business on December 19, 2013, Zilog produced 5,445 additional pages of records. Counsel did not provide a substantive response at that time either.

11. On the afternoon of December 20, 2013, my office received counsel's substantive response to my December 2, 2013 letter. Attached hereto as **Exhibit D** is a true and correct copy of counsel's December 20, 2013 letter. As further articulated in the accompanying memorandum, while counsel addressed some of the concerns raised in my December 2, 2013 letter, a number of outstanding issues remained unresolved.

12. On November 13, 2013, and in anticipation of the presently noticed January 10, 2014 hearing, Ms. Jennifer Klocke, law clerk to Hon. Thomas Neville, indicated that Judge Neville looked forward to the January 10, 2014 hearing and expected "further filings regarding the scope of the issues closer to that time." This renewed motion follows.

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF PLAINTIFF  
AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC. -4-**



I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Executed on the 27th day of December, 2013.

A handwritten signature in black ink, appearing to read "Ken Luvai", written in a cursive style.

---

Kennedy K. Luvai

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF PLAINTIFF  
AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC. -5-**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27th day of December, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: gary@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: rmetcalf@cableone.net

Gerald T. Husch  
Stephen R. Thomas  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O.. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
Attorneys for Defendant Zilog, Inc.

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: gth@moffatt.com srt@moffat.com

  
\_\_\_\_\_  
John N. Zarian

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF PLAINTIFF  
AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC. -6-**

## **EXHIBIT A**

**PARSONS  
BEHLE &  
LATIMER**

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Main 208.562.4900  
Fax 208.562.4901

A Professional  
Law Corporation

Kennedy K. Luval  
208.562.4892  
KLuvai@parsonsbehle.com

December 2, 2013

**VIA FAX (208-385-5384)**

Gerald T. Husch  
Stephen R. Thomas  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

**Re: American Semiconductor v. Zilog**

Counsel:

I am writing regarding Zilog's Responses to American Semiconductor Inc.'s First Set of Requests for Production served on or around October 7, 2013 and do so to bring to your attention various deficiencies that we have noted based on our initial review of Zilog's accompanying production. While reserving ASI's rights regarding the untimeliness of the production, we nevertheless appreciate your efforts in seeking to respond to ASI's document requests.

Our review of the close to 6,000 pages of records and approximately 25,000 "native" files is on-going. However, in the interest of resolving some of our fundamental concerns with the production, we take this opportunity to highlight those issues at this time. As discussed below, we believe Zilog's production fails to fully comply with Rule 34 of the Idaho Rules of Civil Procedure and requires immediate supplementation or correction.

Accordingly, please consider this our good faith attempt to meet and confer in the hopes of resolving these issues informally.

**A. COMPLETENESS OF PRODUCTION / MISSING ATTACHMENTS.**

Our review of the individually bates labeled records produced by Zilog, particularly e-mails, appears to indicate that Zilog's production is not complete. Please find below a representative sample of e-mails that reference attachments that appear to not have been produced.

4813-8414-1591.3

Gerald T. Husch  
Stephen R. Thomas  
December 2, 2013  
Page Two

Document	Language Referencing Apparently Missing Attachments
Z001845	.... Please find attached the updated .....
Z001994	.... Please find attached an updated version of the ...
Z001926	.... Please find attached a version with ....
Z002349	.... Please find attached the updated ...
Z002355	.... Please find attached the updated ....
Z002669	.... Please find attached the current revision of ....
Z002746	.... Please find attached the corrected ....
Z002659	.... Please find attached and herein ...
Z002961	.... Please find attached and herein ...
Z002969	.... Please find attached the current ...
Z000174	.... I have attached the ...
Z000201	.... Attached is a MS-Word and a PDF file of .... <sup>1</sup>
Z002817	.... Please find attached an updated ...
Z002385	.... Please find attached the ...
Z001158	.... Here is the ...
Z001651	.... attached is ...
Z001745	.... please find attached a ...
Z001760	Now, the correct attachment ...

Based on the foregoing, it appears that Zilog has not produced all responsive records in its possession, custody or control. To the extent that the attachments referenced in the documents identified above were produced elsewhere in the production (*i.e.* not in a manner kept in the routine course of Zilog's business), we request that Zilog identify the attachments by bates number.

Please let us know whether the apparently missing attachments have indeed been produced and, if so, please direct us to the documents by bates number. Alternatively, please let us know whether the attachments exist and, if so, when Zilog intends to produce them.

#### **B. IMPROPER CONFIDENTIALITY DESIGNATIONS.**

Much like the Sage co-defendants have attempted to do in this litigation, Zilog appears to have misapplied the confidentiality standards set forth in the Protective Order in place in this action. Zilog's wholesale designations of virtually all of the individually bates numbered records and all of the unlabeled "native" files "CONFIDENTIAL AND ATTORNEYS' EYES ONLY" (hereinafter abbreviated "AEO") violate the express terms of the Protective Order.

---

<sup>1</sup> Only one of the two documents appears to have been produced.

Gerald T. Husch  
Stephen R. Thomas  
December 2, 2013  
Page Three

As you know, paragraphs 2 and 3 of the Protective Order define "CONFIDENTIAL" material as "information or tangible things that qualify for protection under standards developed under I.R.C.P. 26(c), including trade secrets or confidential research, development of commercial information." Furthermore, paragraph 23 of the Protective Order limits the designation of materials as AEO to those instances in which "the designating party reasonably believes in good faith that (a) there is a substantial risk that disclosure of such Confidential Material to its competitor would result in irreparable harm or injury to the designating party, and (b) such Confidential Material constitutes a design document or design file prepared by or on behalf of the designating party."

For illustration purposes, we offer you a series of apparently improper confidentiality designations and request an explanation as to why or how the designations comply with the Protective Order. We do so in spite of our belief that Zilog, as the designating party, bears the burden of establishing that its confidentiality designations are proper.

Thus, for example, in the bates range beginning at Z003574, Zilog has designated as "CONFIDENTIAL" a technical paper that is publicly available (as of November 27, 2013) through a basic Google search on the Internet. Clearly, such documents do not qualify for such a designation. Zilog's misapplication of confidentiality designations extends to its "native" electronic files. In the Z005923 folder, Zilog has designated publicly available literature from a variety of companies as AEO. Indeed, Zilog has even designated a quintessential public document – a U.S. patent – as AEO. In addition, Zilog has designated as AEO several seemingly random .gif images of basic screen icons, html help files, and PowerPoint presentations that do not appear proprietary, nor are they labeled as such.

The foregoing and other examples of "native" files that appear to be improperly designated as AEO are highlighted in the enclosed selected pages of the production "indices" that accompanied the CDs designated as Z005293 and Z005294. (The "native" files of concern to us are denoted by hand-placed checkmarks. Typically, we would have identified the files at issue by bates number; however, Zilog made no effort to appropriately label its "native" files thus prompting our additional concerns articulated in Section C below.)

Also, while the "indices" indicate that the files listed therein are covered by a blanket AEO designation, we do not understand that designation to extend to the "indices" themselves. Nevertheless, out of an abundance of caution, we are treating the "indices" as AEO pending confirmation in writing from you that the "indices" are not intended to be AEO records.

In light of the foregoing, we request that Zilog immediately de-designate all of the above referenced documents or files. If Zilog is unwilling to do so, we request that you confer with us by December 9, 2013 with a view towards reviewing the identified records and thereby discuss the propriety of the confidentiality designation at issue as to each.

Gerald T. Husch  
Stephen R. Thomas  
December 2, 2013  
Page Four

**C. IDENTIFICATION / LABELING OF "NATIVE" FILES.**

As part of its "native" file production, Zilog "produced" two CDs labeled as Z005923 and Z005924 both containing thousands of files – 18,211 files in Z005923 and a further 6,698 in Z005924. Zilog apparently made no effort to uniquely identify each "native" file by bates number or otherwise. Consequently, the only way to identify or reference the contents of the CDs is by cumbersome and potentially confusing file paths. This, of course, is unacceptable in that it makes it difficult for any of the parties to this action to specifically identify or refer to any given "native" file at deposition or at hearing before the Court, for example.

Please note that, given the volume of "native" files at issue, ASI is keenly aware of the large amount of resources needed in order to individually append a unique bates number to each "native" file. Indeed, ASI would prefer that the file and folder names be maintained as presented. That being the case and in order to minimize or eliminate that potential confusion, ASI requests that Zilog supplement the two "indices" for purposes of assigning a unique identification or bates number for each electronic file or folder listed therein.

If Zilog is unwilling or unable to do so, please let us know whether it is acceptable for ASI to undertake this task at its discretion and at Zilog's sole expense.

We believe that the proposal above is both workable and balanced. More importantly, it would maintain the integrity of the "native" files by eliminating the need to re-name them.

Please let us know whether Zilog will undertake to augment the "indices" as requested. If you have a different proposal in mind that would achieve the same goal, please advise and let us know how and when Zilog intends to do so.

**D. INACCESSIBILITY OF "NATIVE" FILES.**

Further, our attempts to review Zilog's "native" files, in part to determine their content and assess the propriety of the blanket AEO designation, has been hampered and considerably slowed down by the fact that many of the files apparently call for specialized software.

To the extent that Zilog continues to maintain the position that the "native" files are AEO (and thus precluding preventing ASI from accessing the files), we request that Zilog will make available to this office the necessary software or native application so as to allow us access to the files. As a starting point, please confirm that Zilog will provide this office with software necessary to open Cadence-related files, particularly those bearing .cd%, .cdb and .xx file extensions.

Gerald T. Husch  
Stephen R. Thomas  
December 2, 2013  
Page Five

We believe that these and other files that we cannot access without specialized software used to create such files are likely to show the nature and extent certain design work performed by the Sage defendants. Therefore, it is vital that, at the very least, our office have proper unfettered access to such files.

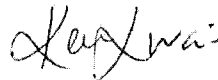
\* \* \*

We look forward to receiving substantive responses regarding the issues raised above on or before **December 9, 2013**. We hope and expect that these and similar outstanding issues will be resolved without need for further motion practice. Please note that in light of the January 10, 2014 scheduled hearing regarding ASI's pending motion to compel against Zilog, ASI reserves the right to supplement and/or "amend" that motion in order to raise any and all unresolved outstanding issues outlined above.

In closing, we appreciate your continued cooperation in this matter. Please let me know if you have any questions.

Sincerely,

PARSONS BEHLE & LATIMER



Kennedy K. Luvai

KKL:vrg

Enclosure

cc: John N. Zarian



## **EXHIBIT B**

# Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

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Idaho Falls  
Pocatello

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Boise ID 83702-7710

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Richard C. Fields	Lee Radford	Benjamin C. Ritchie
John S. Simko	Michael O. Roe	Noah G. Hillen
John C. Ward	David S. Jensen	Matthew J. McGee
David B. Lincoln	James L. Martin	Mindy M. Willman
Gary T. Dance	C. Clayton Gill	Jetta Hatch Mathews
Larry C. Hunter	Michael W. McGreaham	Andrea J. Rosholt
Randall A. Peterman	David P. Gardner	Maria O. Hart
Mark S. Prusynski	Julian E. Gabiola	
Stephen R. Thomas	Kimberly D. Evans Ross	Norman M. Semanko, <i>of counsel</i>
Gerald T. Husch	Jon A. Stenquist	Terri L. Ackerman, <i>of counsel</i>
Scott L. Campbell	Mark C. Peterson	
Robert B. Burns	Tyler J. Anderson	Willis C. Moffatt, 1907-1980
Patricia M. Olsson	Andrew J. Waldera	Eugene C. Thomas, 1931-2010
Christine E. Nicholas	Dylan B. Lawrence	John W. Barrett, 1931-2011
Bradley J. Williams	C. Edward Cather III	Kirk R. Helvie, 1956-2003

December 11, 2013  
*via E-mail*

Kennedy K. Luvai  
Parsons Behle & Latimer, PLC  
960 Broadway Ave., Suite 250  
Boise, ID 83706

**Re: American Semiconductor, Inc. v. Zilog, Inc., et al.**  
**Ada County Case No. CV OC 11 23344**  
MTBR&F File No. 25332.0000

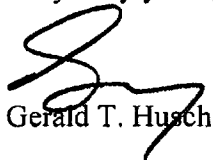
Dear Kennedy:

This correspondence is in response to your letter of December 2, 2013, regarding Zilog's document production and your email of December 6, 2013, regarding the scheduling of the Rule 30(b)(6) depositions of Zilog and Sage.

Due to the press of other business, I do not now have complete responses to all of the issues that you have raised in your letter of December 2, 2013, but I have gathered some information and will provide you with a substantive response within the next week.

I have reached out to my client and to Gary Cooper suggesting that we should look for available deposition dates during the latter half of February or sometime during March based on my understanding of everyone's schedules and Zilog's need to have Dan Eaton attend Sage's deposition. Please let me know if you have different thoughts or specific dates in mind, and I will continue to work to obtain suitable dates.

Very truly yours,



Gerald T. Husch

GTH/cih

cc: Gary L. Cooper

## **EXHIBIT C**

**PARSONS  
BEHLE &  
LATIMER**

960 Broadway Avenue, Suite 250  
Boise, Idaho 83706  
Main 208.562.4900  
Fax 208.562.4901

A Professional  
Law Corporation

Kennedy K. Luvai  
Direct 208.562.4892  
KLuvai@parsonsbehle.com

December 13, 2013

VIA FAX

Gerald T. Husch  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

**Re:** *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.*

Dear Gerry:

I write in further response to your December 11, 2013 letter responding to mine of December 2, 2013 regarding Zilog's document production. Thank you for following up, for gathering information regarding issues raised, and for committing to provide a substantive response. As a courtesy, and given your commitment to provide us with a substantive response, we will grant you until Tuesday, December 17, 2013 to do so after which we may (though we certainly hope to avoid the need to) need to raise any outstanding or unaddressed issues as part of ASI's presently pending motion to compel that is noticed to be heard on January 10, 2014.

As always, thank you for your professional courtesies.

Sincerely,

PARSONS BEHLE & LATIMER



Kennedy K. Luvai

KKL:vrg

## **EXHIBIT D**

# Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

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Idaho Falls  
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December 20, 2013  
*via Hand Delivery*

Richard C. Fields	Lee Radford	Benjamin C. Ritchie
John S. Simko	Michael O. Roe	Noah G. Hillen
John C. Ward	David S. Jensen	Matthew J. McGee
David B. Lincoln	James L. Martin	Mindy M. Willman
Gary T. Dance	C. Clayton Gill	Jetta Hatch Mathews
Larry C. Hunter	Michael W. McGreaham	Andrea J. Rosholt
Randall A. Peterman	David P. Gardner	Maria O. Hart
Mark S. Prusynski	Julian E. Gabiola	
Stephen R. Thomas	Kimberly D. Evans Ross	Norman M. Semanko, <i>of counsel</i>
Gerald T. Husch	Jon A. Stenquist	Terri L. Ackerman, <i>of counsel</i>
Scott L. Campbell	Mark C. Peterson	
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Christine E. Nicholas	Dylan B. Lawrence	<i>John W. Barrett, 1931-2011</i>
Bradley J. Williams	C. Edward Cather III	<i>Kirk R. Helvie, 1956-2003</i>

Kennedy K. Luvai  
Parsons Behle & Latimer, PLC  
960 Broadway Ave., Suite 250  
Boise, ID 83706

**Re: American Semiconductor, Inc. v. Zilog, Inc., et al.**  
**Ada County Case No. CV OC 11 23344**  
MTBR&F File No. 25332.0000

Dear Kennedy:

This letter is in response to yours of December 2, 2013.

## A. COMPLETENESS OF PRODUCTION

In Section A of your correspondence of December 2, 2013, you suggest that Zilog has not produced attachments to emails and then list eighteen (18) emails that, you contend, do not contain any attachments. Zilog has produced the requested emails as "live" documents with links to the attachments, so that whenever you saw a link to an attachment under the heading "Attachments" in an email, you could simply click on the link to view the attachment. Two (2) of the eighteen (18) documents you referenced as not containing attachments, which are bates numbered as Z000174 and Z00201, do in fact have live links to attachments that were produced with those documents, and you could have accessed those attachments by clicking on the links. As should have been readily apparent upon even a cursory review of the other sixteen (16) emails referenced in Section A of your letter of December 2, 2013, those sixteen (16) emails obviously do *not* contain attachments or links to attachments and never did.

I will separately address each of the eighteen (18) documents you have listed in the order you have listed them:

- Z001845—There is no attachment to the original of D. Staab's September 15, 2011 email bates numbered as Z001845.

- Z001994—There is no attachment to the original of D. Staab's September 19, 2011 email bates numbered as Z001994.
- Z001926—There is no attachment to the original of D. Staab's June 7, 2011 email bates numbered as Z001926.
- Z002349—There is no attachment to the original of D. Staab's July 13, 2011 email bates numbered as Z002349.
- Z002355—There is no attachment to the original of D. Staab's June 22, 2011 email bates numbered as Z002355.
- Z002669—There is no attachment to the original of D. Staab's September 1, 2011 email bates numbered as Z002669.
- Z002746—There is no attachment to the original of D. Staab's June 22, 2011 email bates numbered as Z002746.
- Z002659—Z002659 does not contain the language you referenced regarding an attachment.
- Z002961—There is no attachment to the original of D. Staab's March 1, 2011 email bates numbered as Z002961.
- Z002969—There is no attachment to the original of D. Staab's July 20, 2011 email bates numbered as Z002969.
- Z000174—This document has two attachments: (a) nvds.doc and (b) nvds.pdf. The content of these two attachments is identical, and both attachments were produced to you. However, we bates numbered only nvds.pdf, which was bates numbered as Z000175—Z000196. We are producing herewith nvds.doc as Z000174.01—Z000174.22 in the interests of completeness.
- Z000201—This document has two attachments: (a) FlashController.doc and (b) FlashController.pdf. Again, the content of these two attachments is identical, and both attachments were produced to you. However, we bates numbered only FlashController.pdf, which was bates numbered as Z000202—Z000213. We are producing herewith FlashController.doc as Z000201.01—Z000201.12 in the interests of completeness.
- Z002817—There is no attachment to the original of D. Staab's September 20, 2011 email bates numbered as Z002817.

- Z002385—There is no attachment to the original of D. Staab's February 15, 2011 email bates numbered as Z002385.
- Z001158—There is no attachment to the original of G. Yearsley's June 8, 2011 email bates numbered at Z001158.
- Z001651—There is no attachment to the original of W. Tiffany's April 14, 2011 email bates numbered as Z001651.
- Z001745—There is no attachment to the original of D. Staab's September 17, 2011 email bates numbered at Z001745.
- Z001760—There is no attachment to the original of D. Staab's September 14, 2011 email bates numbered at Z001760.

Zilog has made every reasonable effort to produce its records as they are kept in the ordinary course of its business. Those records, as they are kept in the ordinary course of Zilog's business, do not enable us to readily ascertain whether the unattached "attachments" referenced in sixteen (16) of the eighteen (18) documents you listed have been produced elsewhere in Zilog's production documents. You are welcome to view the above-referenced emails in their native format in our offices to verify that there were no attachments to any of the eighteen (18) referenced documents other than Z000174 and Z000201. Furthermore, we are making reasonable efforts to determine whether the unattached attachments described in the emails listed in your letter of December 2, 2013, have been produced elsewhere in Zilog's production documents and, if so, the bates numbers under which they have been produced. If the documents described as attachments in the sixteen (16) emails you referenced have not been produced but can be identified and located with reasonable effort, they will be produced.

#### **B. CONFIDENTIALITY DESIGNATIONS**

You have asserted that Zilog has improperly designated many of its production documents as confidential and you have provided a few alleged examples. We believe there is always the possibility of good faith error when any party is involved in analyzing thousands upon thousands of pages of documents. Subject to that caveat, we believe Zilog has acted in good faith and has properly designated its production documents. Furthermore, we believe that if a document is an attachment to a confidential email, the document is confidential in the sense that it is a part of a confidential communication. Likewise, if Zilog used a document to develop confidential information, we believe that Zilog's use of the document is confidential and that the connection between the document and Zilog's confidential information is confidential.

Furthermore, an allegedly public document may qualify for AEO designation where, as here, there is substantial risk that disclosure of the document will cause irreparable harm or injury to Zilog and the document constitutes a Zilog "design document or design file" or "production of the document to a party would enable that party to deduce the substance of design documents,



design files and other design information provided by Zilog.” In any event, there is nothing to prevent ASI from obtaining public documents from public or other sources.

More importantly, however, we do not understand why ASI wishes to needlessly waste time and money contesting the designation numerous documents as confidential. Whether a document was correctly designated as confidential or not is an ancillary issue that is not of primary importance in this litigation. Fighting over confidentiality designations will not contribute to the just, speedy and inexpensive determination of this litigation. The burden and expense that your proposal would place on Zilog clearly outweighs any conceivable benefit to ASI. The burden and expense of reviewing each and every document produced by Zilog to determine whether it was correctly designated are exacerbated by the fact that the document complained of will never likely be filed with the Court or used in any proceedings before the Court. Where, as here, a party has made reasonable good faith efforts to produce thousands and thousands of documents in good faith, even an improper designation of a requested document as confidential should not be of great concern to the requesting party because a confidentiality designation, whether correct or erroneous, will have little or no effect on the conduct of the litigation or the result of the litigation.

In addition, ASI is not under any compulsion at this time to challenge the propriety of the designation of any document as confidential. Section 8 of the Court’s Protective Order clearly states that: “A party shall not be obligated to challenge the propriety of any designation of Confidential Material as CONFIDENTIAL at the time of designation, and a failure to do so shall not preclude a subsequent challenge to the designation.” The better approach would be to focus on the propriety of a document’s designation at the time the document is to be filed with the Court as part of an unsealed record or used in a public court proceeding.

You demand that Zilog immediately re-designate numerous files that you have highlighted on the two (2) indexes of the many native files that Zilog produced to ASI as Z005923 and Z00592. We have reviewed the confidentiality and AEO designations of the documents you have highlighted on the Z005923 Disk Index, and we have changed designations where appropriate. However, we found that the overwhelming majority of your complaints were unfounded. Many of the documents you want Zilog to re-designate were in fact, part of the software itself, or design files.

We have also reviewed the confidentiality and AEO designations of the files you have highlighted on the Z005924 Disk Index. An uninformed reviewer of the names of the .HTM files listed on the Z005924 Disk Index, like those you have marked on Z006051 and requested we re-designate, might conclude that the files are generic or public webpage files. However, they are not. All of these files are scripts that were written and used by the design engineers during the development of the product. Each script identifies the author of the file (e.g., Theo Verhoeven).

Thus, we are not willing to de-designate en masse all of the documents and files you have referenced. However, as discussed below, we have provided you with Bates numbers for all of

the individual documents we have produced, even though many of those documents are electronic documents that cannot be bates numbered in their native format. If you believe a particular document has been improperly designated as confidential or AEO, please identify the document by bates number and provide us with the reason you believe the document was improperly designated.

**C. IDENTIFICATION / LABELING OF "NATIVE" FILES**

You are correct that Zilog, as part of its production, produced to ASI two (2) CDs labeled as Z005923 and Z005924 and that both CDs contained thousands of files in their native formats. Z005923 contained 18, 211 files, and Z005924 contained 6,698 files.

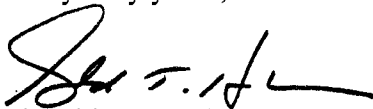
It was (and is) technologically impossible to bates number each of the files in its native format on those two CDs. Thus, although Zilog was under no legal obligation to create or provide you with an index to either of the two CDs, Zilog created an index for each CD and provided the two indexes to you as Z005925 through Z006034 (for the disk bates numbered as Z005923) and as Z006035 through Z006101 (for the CD bates numbered as Z005924).

Pursuant to your request, Zilog has now augmented those two indexes and assigned a unique bates number for each electronic file. Zilog is producing herewith electronic copies of the augmented indexes bates numbered as Z005923.001—Z005923.710 (for Disk Z005923) and Z005924.001—Z005924.247 (for Disk Z005924). Thus, we see no need for ASI to duplicate this augmentation, and it is not acceptable for ASI to undertake such a task at Zilog's expense.

**D. ACCESSIBILITY OF "NATIVE" FILES**

You have requested that Zilog provide you with software necessary to open Cadence-related files, particularly those bearing .cd%, .cdb and .xx file extensions. Zilog provided you with these documents as they are kept in the ordinary course of its business. Zilog is not required to purchase software for your use. Perhaps you can obtain the software from ASI or hire a consultant who will be able to use its own software to examine the files in question.

Very truly yours,



Gerald T. Husch

GTH/cih  
Enclosure  
cc: Gary L. Cooper

ORIGINAL

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:35

DEC 27 2013

CHRISTOPHER D. RICH, Clerk  
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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
corporation; ZILOG, INC., a Delaware corporation;  
DAVID ROBERTS; GYLE YEARSLEY; RUSSELL  
LLOYD; WILLIAM TIFFANY; EVELYN  
PERRYMAN; and Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S  
RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC.**

**MEMORANDUM IN SUPPORT OF PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL AGAINST  
DEFENDANT ZILOG, INC.**

PAGE 1

000612

Pursuant to Rule 37 of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") respectfully submits the following memorandum in support of its Renewed Motion to Compel against Defendant Zilog, Inc. In renewing this motion, ASI respectfully incorporates all prior briefing relating to the motion to compel filed on August 30, 2013, and adds the following points of fact and law.

### **INTRODUCTION**

Last week, on the eve of the noticed hearing on ASI's motion to compel, and after having had nearly six months in which to comply with ASI's straightforward document requests, defendant Zilog, Inc. ("Zilog") dumped thousands of "native" electronic files and individually Bates-labeled documents on ASI. Compounding the untimeliness of this production and ensuring prejudice to ASI, *virtually all* of the documents and files produced are designated as "CONFIDENTIAL ATTORNEY'S ONLY" (hereinafter, "AEO") – in a transparent bid to continue to hamper ASI's review of defendants' document production. This over-designation is not the result of any inadvertence of Zilog's part, but now clearly a litigation tactic aimed at frustrating discovery and review of relevant information by ASI.

By this renewed motion, filed with the consent of the Court, ASI seeks an order directing Zilog to re-designate its October 7, 2013 production and any subsequent productions in a manner consistent with the protective order in place in this action. In addition, with respect to certain "native" electronic files produced by Zilog, ASI submits that Zilog should be compelled to make available the necessary specialized software to allow counsel for ASI to review these "native" electronic files.

## BACKGROUND

As of August 30, 2013, Zilog already had been given six months to comply with ASI's discovery requests seeking disclosure of information relevant to this action. [Memorandum in Support of Motion to Compel, filed Aug. 30, 2013]. However, because Zilog failed to produce any records up to that point, ASI was forced to file a motion to compel in order to mitigate and address the mounting prejudice occasioned by Zilog's repeated failures to comply with basic discovery requests. [*Id.*] The hearing on ASI's motion to compel was noticed for October 18, 2013. [Notice of Hearing, filed Aug. 30, 2013].

On October 7, 2013, some five weeks after ASI filed the motion to compel and mere days before the Court was set to hear the pending motion, Zilog dumped on ASI 5,922 pages of records and approximately 25,000 "native" files without explanation as to the tardiness of the production. [Luvai Decl., ¶ 4]. Zilog then moved to vacate the October 18, 2013 noticed hearing arguing, in part, that the motion was "moot" based on the foregoing (untimely) production. [See Motion to Vacate and Reset October 18, 2013 Hearing, filed Oct. 11, 2013]. ASI opposed the request to vacate the hearing as improper given the timing of the production and Zilog's failure to certify that it had produced all responsive records. [Opposition to Motion to Vacate and Reset Hearing, filed Oct. 15, 2013].

On October 16, 2013, the Court ruled on Zilog's request for a continuance of the October 18, 2013 noticed hearing. [Memorandum Decision and Order, filed Oct. 16, 2013]. The Court found that ASI persuasively argued that the bases for Zilog's request were not well taken. That said, the Court nevertheless found that, in light of Zilog's recent production, "it [was] in the interest of the Court and all of the parties to delay the hearing for a short period of time so that

[ASI] may have an opportunity to review the new discovery and to narrow the issues presented in its Motion to Compel, if appropriate.” [Id.].

Therefore, ASI re-noticed the motion to compel hearing for (ultimately) January 10, 2014, providing ample opportunity for ASI to substantively review Zilog’s production and for ASI and Zilog to meet and confer as to any outstanding issues, as appropriate. [See Amended Notice of Hearing, filed Oct. 29, 2013]. In further anticipation of the January 10, 2014 hearing, the Court indicated that it looked forward to further filings regarding the scope of outstanding issues in the days leading up to the hearing date. [Luvai Decl., ¶ 12].

Having had an opportunity to review Zilog’s untimely production and to meet and confer amongst counsel, ASI files this renewed motion (as invited by the Court) as a means of resolving the remaining outstanding issues.

#### **EFFORTS TO RESOLVE OUTSTANDING ISSUES**

On December 2, 2013, after having an opportunity to conduct a preliminary review of the 5,922 pages of records and approximately 25,000 “native” files produced by Zilog on October 7, 2013, counsel for ASI sent a comprehensive meet and confer letter to counsel for Zilog detailing various deficiencies with the October 7, 2013 production. [Luvai Decl., Ex. A]. The deficiencies identified by ASI were broadly categorized as follows: (a) incompleteness of Zilog’s production, particularly with regard to referenced attachments to e-mails that were apparently not produced; (b) the impropriety of Zilog’s blanket use of the more restrictive AEO designation; (c) Zilog’s failure to appropriately Bates label or identify the approximately 25,000 “native” files it produced; and, (d) counsel for ASI’s inability to review various AEO electronic files which require specialized software in Zilog’s possession. [Id.] ASI requested a response on or before December 9, 2013. [Id.]

On December 11, 2013, counsel for Zilog responded by stating that “the press of other business” had prevented Zilog from providing a supplemental response, but promising “a substantive response within the next week.” [Luvai Decl., Ex. B]. In spite of the basic nature of the issues raised in ASI’s December 2, 2013 letter and Zilog’s history of delay in responding to ASI’s queries regarding discovery, ASI provided Zilog with the courtesy of an extension until December 18, 2013. [Luvai Decl., Ex. C]. Zilog did not respond within that extended timeframe, but did so on December 20, 2013. [Luvai Decl., Ex. D].

In addressing the issue raised by ASI regarding incompleteness of its October 7, 2013 production on account of apparently unproduced referenced attachments to e-mails, Zilog generally responds that sixteen of the eighteen e-mails identified by ASI “obviously do not contain attachments or links to attachments and never did.” [*Id.*] Zilog makes this sweeping assertion despite the *unambiguous* language in the e-mails (as excerpted in ASI’s December 2, 2013 letter) clearly referencing such attachments. [Luvai Decl., Ex. A].

In response to ASI’s concerns regarding the gross over-designation of documents as AEO, other than claiming to have de-designated a few (unidentified) improperly designated records, Zilog has refused to de-designate the remaining vast bulk of improperly designated records (as identified by ASI). [Luvai Decl., Ex. D].

In addition, purporting to address ASI’s concerns about Zilog’s failure to appropriately Bates label or identify the approximately 25,000 “native” files, Zilog only produced a “revised index” which ASI is in the process of reviewing (it was produced on December 19, 2013).

Finally, as to the fourth issue raised by ASI with regard to Zilog’s production of electronic records requiring specialized software in Zilog’s possession – to allow review by

counsel for ASI – Zilog simply responds (dismissively) that ASI’s counsel should obtain software or hire an expert who may have or can acquire such (expensive) software.

In light of Zilog’s responses (as outlined in the December 20, 2013 letter), a number of issues remain unresolved. For example, Zilog’s blanket over-designation of records as AEO and its production of files requiring specialized software to review both remain unresolved.

In addition, of course, counsel has very recently made representations regarding the apparently missing attachments and Zilog’s production of a revised index of “native” electronic files. These matters may remain unresolved, and ASI reserves the right to raise these issues, as warranted, at a subsequent appropriate time.

#### **LEGAL STANDARDS**

Rule 26 of the Idaho Rules of Civil Procedure provides that a party “may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” I.R.C.P. 26(b)(1).

Further, Rule 37 provides that “ . . . if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.” I.R.C.P. 37(a)(1). For purposes of Rule 37(a), “an evasive or incomplete answer is to be treated as a failure to answer.” I.R.C.P. 37(a)(4).



Discovery in civil cases is geared towards broad disclosure of relevant or potentially relevant information; indeed, the Idaho Supreme Court has observed that “[t]he purpose of our discovery rules is to facilitate fair and expedient pretrial fact gathering. It follows, therefore, that discovery rules are not intended to encourage or reward those whose conduct is inconsistent with that purpose.” *Edmunds v. Kraner*, 142 Idaho 867, 873, 136 P.3d 338, 344 (2006).

A party’s sweeping use of the AEO designation can be a form of discovery abuse that may attract sanctions from the Court. *See e.g. THK America, Inc. v. NSK Co., Ltd*, 157 F.R.D. 637, 647 (N.D.Ill. 1993); *Quotron Systems, Inc. v. Automatic Data Processing, Inc.*, 141 F.R.D. 37, 40 (S.D.N.Y. 1992).

### **ARGUMENT**

#### **A. ZILOG SHOULD BE COMPELLED TO DESIGNATE ITS DOCUMENTS APPROPRIATELY UNDER THE TERMS OF THE PROTECTIVE ORDER.**

Much like the Sage co-defendants have attempted to do in this litigation, Zilog appears to have misapplied the confidentiality standards set forth in the Protective Order in place in this action. Zilog’s wholesale and *blanket* designations of virtually all of its documents as AEO violate the express terms of the Protective Order. [Protective Order, filed Jan. 29, 2013].

Despite the fact that Zilog bears the burden of establishing the propriety of its confidentiality designations, *see THK*, 57 F.R.D. at 647 and *Quotron*, 141 at 40, ASI directed Zilog to a series of apparently improper confidentiality designations and requested an explanation as to why or how the designations comply with the Protective Order, to no avail. [Luvai Decl., Ex. A]. In this regard, the *THK* and *Quotron* cases are instructive, as they interpret companion federal rules. *See Chacon v. Sperry Corp.*, 111 Idaho 270, 275 (1986) (interpreting Idaho Rules of Civil Procedure consistent with similar Federal Rules of Civil Procedure).

In *Quotron*, the defendant produced documents with a “Highly Confidential” designation thus limiting access to counsel and outside experts. *Quotron*, 141 F.R.D. at 39. The plaintiff complained that by over-designating its production as “Highly Confidential,” defendant had impaired its ability to prepare for trial. *Id.* The Court agreed and was persuaded, in part, by defendant’s offer to re-designate records it subsequently determined to have been improperly designated as “Highly Confidential.” *Id.*

In *THK*, the Court went one step further in light of the defendant’s wholesale misuse of the AEO designation. There, the defendant produced approximately 75,000 pages of documents, out of which 50,000 pages were produced subject to the protective order. *THK*, 57 F.R.D. at 645. Of the approximately 50,000 pages that were produced subject to the protective order, approximately 39,000 were designated AEO. *Id.* The Court found that designating 79% of the documents produced subject to the protective order as AEO was “absurdly high” and a misuse of the designation. *Id.* (stating that “[d]efendant’s wholesale use of ‘Attorney’s Eyes Only’ stands the Protective Order on its head” and that “[w]hat was intended by the very language of the Protective Order to be a very *limited* category reserved for specially sensitive documents has become the most used category by far. . . .”) (emphasis in original). As further evidence of misuse of the AEO designation, the Court noted, in part, that the defendant applied the AEO designation to documents it did not even author or create. *Id.* at 645-47.

Here, even worse than the defendant in *THK*, Zilog has designated *virtually all* of its October 7, 2013 production as AEO without defensible grounds for doing so. [See Luvai Decl., ¶ 5 (*close to 99 percent* of the October 7, 2013 production is designated AEO)]. Paragraphs 2 and 3 of the Protective Order in place in this action define “CONFIDENTIAL” material as “information or tangible things that qualify for protection under standards developed under

I.R.C.P. 26(c), including trade secrets or confidential research, development of commercial information.” Furthermore, paragraph 23 of the Protective Order limits the designation of materials as AEO to those instances in which “the designating party reasonably believes in good faith that (a) there is a substantial risk that disclosure of such Confidential Material to its competitor would result in irreparable harm or injury to the designating party, and (b) such Confidential Material constitutes a design document or design file prepared by or on behalf of the designating party.”

Rather than comply with the standards set forth above, Zilog has resorted to a wholesale designation of *all (i.e. 100 percent)* of the approximately 25,000 “native” files it produced on October 7, 2013 as AEO and appears to have done so without so much as reviewing the designated files in order to determine whether, in fact, each one of the files should be so designated. [See Luvai Decl., ¶ 5]. In addition, Zilog has manifestly over-designated its paginated non-“native” October 7, 2013 production – since approximately *93 percent* of that production (5,506 pages of the 5,922 page-production) is designated as AEO. [*Id.*]. In all, approximately *99 percent* of the individually Bates-labeled documents and “native” electronic files produced by Zilog on October 7, 2013 are designated AEO. [*Id.*]

Stated simply and fairly, *substantially all of Zilog’s October 7, 2013 production is designated AEO*. By comparison, the court in *THK* opined that the designation of approximately 80 percent of designated records as AEO was “*absurdly high*” (emphasis added). Surely, the designation of close to *99 percent* of all records produced as AEO is even more so. That should form a sufficient basis for this Court to compel Zilog to review its production and appropriately designate the records and files produced consistent with the terms of the protective order.

Furthermore, as in *Quotron*, Zilog's response to the concerns raised by ASI regarding its wholesale and improper use of confidentiality designations, particularly AEO, amounts to a tacit admission that Zilog has over-designated its production. [See Luvai Decl., Ex. D (contending that "[w]hether a document was correctly designated as confidential or not is an ancillary issue that is not of primary importance in this litigation" and further arguing that "[t]he better approach would be to focus on the propriety of a document's designation at the time the document is to be filed with the Court . . .")]. Zilog further claims to "have reviewed the confidentiality and AEO designation of the [documents at issue and to] have changed designations where appropriate." *Id.*

Clearly, Zilog's wholesale confidentiality designations of its October 7, 2013 as AEO, with apparently little to no substantive review of the propriety of such designations, are improper. Equally improper is Zilog's attempt to avoid its "responsibility to ensure that the proper confidential designations are assigned to documents produced," *THK*, 157 F.R.D. at 644, by attempting to shift that burden to ASI even after acknowledging that ASI identified a range of records and files that ASI contends were improperly designated. [Luvai Decl. Ex. D (dubiously demanding that ASI "identify the document by Bates number and provide [Zilog] with the reason [ASI] believe[s] the document was improperly designated.")].

Among the "native" files identified by ASI as having been improperly designated as AEO are several technical publications that are *publicly available on the Internet* and which were neither prepared for or on behalf of Zilog. [See Luvai Decl., Ex. A]. In fact, Zilog designated a U.S. patent – a public document – as AEO. [*Id.*] Rather than establish the propriety of these and the other examples of over-designation, Zilog instead advocates a legally untenable position in which *ASI* bears the burden of establishing the impropriety of each and every designation.

Clearly, ASI cannot and should not be required to challenge each of Zilog's designations individually where Zilog has so blatantly over-designated and mis-designated its production. The burden rests squarely with Zilog, as the designating party, to show that the information at issue is protectable and that the document or file should be so designated. *See e.g. THK*, 157 F.R.D. at 646. Accordingly, ASI requests that the Court issue an order compelling Zilog to appropriately designate its October 7, 2013 production and any subsequent production.

**B. AS TO ZILOG'S IMPROPER AEO DESIGNATIONS REGARDING CERTAIN "NATIVE" FILES REQUIRING SPECIALIZED SOFTWARE, ZILOG SHOULD MAKE SUCH SOFTWARE AVAILABLE TO COUNSEL FOR ASI.**

Zilog's blanket designation of its "native" production of electronic files as AEO is further compounded by the fact that a considerable number of those files require specialized software in Zilog's possession in order to facilitate review. Indeed, had Zilog properly designated its "native" production (that is, had Zilog used the AEO designation in the manner called for under the terms of the Protective Order), it is likely that ASI would have had an opportunity to review those "native" files by now. However, in an apparent bid to restrict ASI's ability to prepare for further discovery (and subsequently for trial), Zilog has resorted to the *blanket* AEO designation of "native" files – thus precluding review of the files by ASI.

Zilog's flippant response to ASI's concerns regarding the inaccessibility of a significant portion of the "native" production to counsel by stating that counsel obtain the software from ASI or retain an expert with access to the software is unavailing. Of course, counsel for ASI cannot discuss the nature of the "native" files produced with ASI given the blanket AEO designation of such files. Thus, even if it were an option, counsel for ASI is not in a position to obtain the software at issue from ASI without violating the Protective Order. In any event, given the inappropriate over-designation of the "native" files as AEO, Zilog clearly seeks to compound

ASI's costs by forcing ASI to buy software and/or hire experts at its own expense for purposes of ASI's simply determining the propriety of the designations at issue.

Accordingly, ASI submits, particularly to the extent that Zilog elects to stand on improper confidentiality designations (thus precluding ASI from gaining access to the files at issue), Zilog should be compelled to facilitate review of the files at issue by ASI's counsel by providing the necessary specialized software.


### **CONCLUSION**

For the foregoing reasons, the Court should compel Zilog to appropriately designate its productions and, further, with regard to "native" files, Zilog should be compelled to make available any specialized software necessary for counsel for ASI to review such files.

DATED this 27th day of December, 2013.

PARSONS BEHLE & LATIMER

By

  
John N. Zarian

Kennedy K. Luvai

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of December, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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\_\_\_\_\_  
John X. Zarian

JAN 03 2014

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25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

Case No. CV OC 1123344

**DECLARATION OF RAMON LOPEZ  
IN OPPOSITION TO AMERICAN  
SEMICONDUCTOR, INC.'S  
RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC.**

**DECLARATION OF RAMON LOPEZ IN OPPOSITION TO AMERICAN  
SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL AGAINST  
DEFENDANT ZILOG, INC. - 1**



AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

RAMON LOPEZ declares and states as follows:

### **BACKGROUND**

1. I am now and have been since August 2013 Assistant Corporate Counsel of the Defendant, Zilog, Inc. ("Zilog"). I hold a juris doctorate that I received in 2007 from Santa Clara University School of Law. I am an active member in good standing of the California State Bar.

2. I am making this declaration on the basis of my personal knowledge as a Zilog employee and in opposition to Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc. ("ASI's Renewed Motion to Compel"), filed herein on or about December 27, 2013.

### **REVIEW AND DESIGNATION OF ZILOG DOCUMENTS AND FILES FOR PRODUCTION**

3. As part of my duties as Assistant Corporate Counsel for Zilog, I have spent approximately eighty (80) hours engaged in the following activities for Zilog:

(a) identifying documents, including electronically stored information, requested by American Semiconductor, Inc. ("ASI") in Plaintiff's First Set of Requests for Production to Defendant Zilog, Inc., dated July 12, 2013;

(b) reviewing those documents to determine which should be designated as "Confidential" or "Confidential and Attorneys' Eyes Only" pursuant to the Court's Protective Order (the "Protective Order") filed January 29, 2013; and

(c) when it reasonably and in good faith appeared that a document should be designated as "Confidential" or "Confidential and Attorneys' Eyes Only" pursuant to the Protective Order, so designating the document prior to its production to ASI in this lawsuit.

4. As a result of my efforts and those of Zilog's other attorneys and staff, Zilog has produced approximately 36,454 electronic pages of documents or files, bates numbered as Z000001 through Z011547, to ASI in this litigation, whereas ASI has not produced a single document to Zilog.

5. In performing these duties, I have been familiar with and adhered to the Protective Order (the "Protective Order") entered by this Court on January 26, 2013, which states in pertinent part:

#### **DESIGNATION**

3. In accordance with this Protective Order, any party or non-party may designate any Confidential Material as "CONFIDENTIAL" in this Action if it believes in good faith that the material constitutes or embodies information that (a) satisfies the definition of Confidential Material in the foregoing Paragraph 2, (b) is not generally known, and (c) which the designating party would not normally reveal to third parties or would cause third parties to maintain in confidence.

\* \* \*

#### **ATTORNEYS' EYES ONLY INFORMATION**

23. Any party may designate Confidential Material as "CONFIDENTIAL AND ATTORNEYS' EYES ONLY" if the designating party reasonably believes in good faith that (a) there is a substantial risk that disclosure of such Confidential Material to

its competitor would result in irreparable harm or injury to the designating party, and (b) such Confidential Material constitutes a design document or design file prepared by or on behalf of the designating party.

24. For purposes of paragraph 23(b) above, design documents and design files shall include, without limitation, design schedules, design and device specifications, circuit schematics, feature sets, netlists, RLT design files, test vectors, design rules, electrical rules, layout views, GDSII files, design/layout scripts, VCD data files, verification files, simulations, simulation results (graphical and test) and related information, and any documentation of any kind, name or nature, electronic or otherwise, containing information contained in a design document or design file. Design documents and design files shall not include, without limitation, that portion of any correspondence or emails describing business arrangements, engineers involved, or the general nature of the work to be done.

25. Notwithstanding the provisions of the foregoing paragraphs 23 and 24, that portion of any design documents or design files prepared (in whole or in part) by any of the Defendants in this action other than Zilog, shall not be designated as "ATTORNEYS' EYES ONLY," except that any portion of any document created by a Defendant may be designated as "ATTORNEYS' EYES ONLY" if production of such portion of the document to a party would enable that party to deduce the substance of design documents, design files or other design information provided by Zilog to another Defendant.

#### **PRODUCTION OF ZILOG FILES IN NATIVE FORMAT**

6. On or about October 7, 2013, Zilog produced to ASI electronic documents bates numbered as Z000001 through Z006101. Many of the documents produced by Zilog are electronic files that Zilog produced to ASI in their "native" (original) electronic format. It was (and is) technologically impossible to affix an electronic bates number to those documents without altering and damaging the data, such as file and folder names, within the documents. Therefore, Zilog produced to ASI two (2) Compact Disks ("CDs" or "Disks") labeled as Z005923 and Z005924. Both CDs contained thousands of files in their native formats. Z005923

contained 18, 211 files, and Z005924 contained 6,698 files. Both Disks contained data that was properly designated as "Confidential and Attorneys' Eyes Only" pursuant to the Protective Order, so both Disks were so labelled.

#### **ZILOG'S VOLUNTARY CREATION OF THE Z005923 AND Z005924 DISK INDEXES**

7. Since it was (and is) technologically impossible to bates number each of the files in its native format on the two CDs, Zilog, without any legal obligation to do so, created an index for each CD and provided the two indexes to ASI as Z005925 through Z006034 (for the Disk bates numbered as Z005923) (the "Z005923 Disk Index") and as Z006035 through Z006101 (for the Disk bates numbered as Z005924) (the "Z005924 Disk Index").

#### **ZILOG'S VOLUNTARY SUPPLEMENTATION OF THE INDEXES**

8. By letter dated December 2, 2013, a true and correct copy of which (without enclosures) is attached hereto as Exhibit A, ASI's counsel requested Zilog's counsel to supplement its two indexes to the Disks. Without any legal obligation to do so, Zilog supplemented those two indexes, by assigning a unique bates number to each electronic file, and then produced to ASI electronic copies of the supplemental indexes. Those supplemental indexes, which together were almost 950 pages long, were bates numbered as Z005923.001—Z005923.710 (the "Supplemental Disk Z005923 Index") and Z005924.001—Z005924.247 (the "Supplemental Disk Z005924 Index").

#### **ZILOG'S VOLUNTARY RE-DESIGNATION OF FILES LISTED ON ZILOG'S DISK Z005923 INDEX**

9. Using enclosures to the same letter dated December 2, 2013, ASI's counsel checked approximately 253 of the files listed on Zilog's Disk Z005923 Index and

approximately 96 of the files listed on Zilog's Disk Z005924 Index and contended Zilog had improperly designated the checked files as Confidential and Attorneys' Eyes Only.

10. I reviewed each of the 253 files that ASI had checked on the Disk Z005923 Index. I changed designations where appropriate as to the files that ASI's counsel had checked on the Z005923 Disk Index. However, I found that the overwhelming majority of ASI's complaints were unfounded. Many of the documents that ASI had checked on the Disk Z005923 Index and demanded that Zilog re-designate were, in fact, part of the software itself, or design files that were properly designated as "Confidential and Attorneys' Eyes Only" pursuant to the Protective Order.

#### **ZILOG'S VOLUNTARY RE-EXAMINATION OF FILES LISTED ON ZILOG'S DISK Z005923 INDEX**

11. I also reviewed the Confidentiality and Attorneys' Eyes Only designations of the approximately 96 files that ASI's counsel had checked on the Disk Z005924 Index. An uninformed reviewer of the names of the .HTM files listed on the Z005924 Disk Index, like those ASI's counsel checked on Z006051 and requested Zilog to re-designate, might conclude that the files are generic or public webpage files. However, they are not. All of these files are scripts that were written and used by the design engineers during the development of the product.

#### **ZILOG'S ATTEMPT TO RESOLVE DISPUTE WITHOUT JUDICIAL ACTION**

12. As noted above, on or about October 7, 2013, Zilog produced to ASI all of the documents bates numbered as Z000001 through Z006101, including the 18,211 files on Disk Z005923 and the 6,698 files on Disk Z005924. In addition, on or about December 19, 2013, Zilog produced approximately 5,445 additional documents bates numbered as Z006102

through Z011547 to ASI. Thus, Zilog has produced approximately 36,454 pages of documents or files to ASI in this litigation.

13. In ASI's Renewed Motion to Compel, ASI "seeks an order directing Zilog to re-designate its October 7, 2013 production and any subsequent productions in a manner consistent with the protective order in place in this action." *Id.*, p. 2. In effect, ASI is seeking an order requiring Zilog to review over 36,000 pages of documents or electronic files to determine whether Zilog's original designation of certain of those documents as "Confidential" or "Confidential and Attorney's Eyes Only" was correct. It is difficult to estimate the amount of time that I would require to conduct that review, but it would be a substantial amount of time.

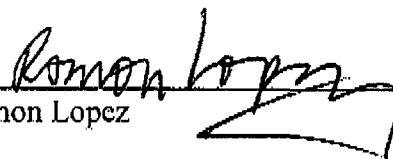
14. There is always the possibility of good faith error when any party is involved in analyzing thousands upon thousands of pages of documents. Nevertheless, I believe Zilog and I have acted in good faith and have properly designated the documents it has produced to ASI.

15. Zilog has provided ASI with a separate bates number identifying each document or file it has produced to ASI in this litigation. In addition, Zilog has asked ASI's counsel that if ASI believes that a particular document has been improperly designated as "Confidential and Attorneys' Eyes Only," to please identify the document by bates number and provide Zilog with the reason ASI believes the document was improperly designated. Zilog's intention was to amicably resolve ASI's contention that Zilog has improperly designated its production documents. However, ASI has failed or refused to engage in such a process, choosing instead to waste judicial resources.

16. ASI has never conferred or attempted to confer with Zilog in an attempt to resolve any issue regarding the 5,445 additional documents bates numbered as Z006102 through Z011547 that Zilog produced to ASI on or about December 19, 2013, and ASI's Renewed Motion to Compel, which seeks an Order of the Court requiring Zilog to re-designate documents included in Z006102 through Z011547, contains no certification that ASI has conferred or attempted to confer with Zilog in an attempt to resolve any issue regarding those documents.

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 2nd day of January, 2014.

  
Ramon Lopez

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2014, I caused a true and correct copy of the foregoing **DECLARATION OF RAMON LOPEZ IN OPPOSITION TO AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL AGAINST DEFENDANT ZILOG, INC.** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182

*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
☒ Electronic Mail

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Facsimile (208) 337-4854

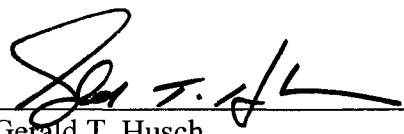
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
☒ Electronic Mail

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
960 Broadway Ave., Suite 250  
Boise, ID 83706  
Facsimile (208) 562-4901

*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
\_\_\_\_\_  
Gerald T. Husch



# **EXHIBIT A**

**PARSONS  
BEHLE &  
LATIMER**

960 Broadway Avenue, Suite 250  
Boise, Idaho 83706  
Main 208.562.4900  
Fax 208.562.4901

A Professional  
Law Corporation

Kennedy K. Luval

208.562.4892  
KLuval@parsonsbehle.com

December 2, 2013

**VIA FAX (208-385-5384)**

Gerald T. Husch  
Stephen R. Thomas  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

**Re: American Semiconductor v. Zilog**

**Counsel:**

I am writing regarding Zilog's Responses to American Semiconductor Inc.'s First Set of Requests for Production served on or around October 7, 2013 and do so to bring to your attention various deficiencies that we have noted based on our initial review of Zilog's accompanying production. While reserving ASI's rights regarding the untimeliness of the production, we nevertheless appreciate your efforts in seeking to respond to ASI's document requests.

Our review of the close to 6,000 pages of records and approximately 25,000 "native" files is on-going. However, in the interest of resolving some of our fundamental concerns with the production, we take this opportunity to highlight those issues at this time. As discussed below, we believe Zilog's production fails to fully comply with Rule 34 of the Idaho Rules of Civil Procedure and requires immediate supplementation or correction.

Accordingly, please consider this our good faith attempt to meet and confer in the hopes of resolving these issues informally.

**A. COMPLETENESS OF PRODUCTION / MISSING ATTACHMENTS.**

Our review of the individually bates labeled records produced by Zilog, particularly e-mails, appears to indicate that Zilog's production is not complete. Please find below a representative sample of e-mails that reference attachments that appear to not have been produced.

4813-8414-1591.3

Gerald T. Husch  
 Stephen R. Thomas  
 December 2, 2013  
 Page Two

Document	Language Referencing Apparently Missing Attachments
Z001845	.... Please find attached the updated .....
Z001994	.... Please find attached an updated version of the ...
Z001926	.... Please find attached a version with .....
Z002349	.... Please find attached the updated ...
Z002355	.... Please find attached the updated .....
Z002669	.... Please find attached the current revision of .....
Z002746	.... Please find attached the corrected .....
Z002659	.... Please find attached and herein ...
Z002961	.... Please find attached and herein ...
Z002969	.... Please find attached the current ...
Z000174	.... I have attached the ...
Z000201	.... Attached is a MS-Word and a PDF file of .... <sup>1</sup>
Z002817	.... Please find attached an updated ...
Z002385	.... Please find attached the ...
Z001158	.... Here is the ...
Z001651	.... attached is ...
Z001745	.... please find attached a ...
Z001760	Now, the correct attachment ...

Based on the foregoing, it appears that Zilog has not produced all responsive records in its possession, custody or control. To the extent that the attachments referenced in the documents identified above were produced elsewhere in the production (*i.e.* not in a manner kept in the routine course of Zilog's business), we request that Zilog identify the attachments by bates number.

Please let us know whether the apparently missing attachments have indeed been produced and, if so, please direct us to the documents by bates number. Alternatively, please let us know whether the attachments exist and, if so, when Zilog intends to produce them.

#### B. IMPROPER CONFIDENTIALITY DESIGNATIONS.

Much like the Sage co-defendants have attempted to do in this litigation, Zilog appears to have misapplied the confidentiality standards set forth in the Protective Order in place in this action. Zilog's wholesale designations of virtually all of the individually bates numbered records and all of the unlabeled "native" files "CONFIDENTIAL AND ATTORNEYS' EYES ONLY" (hereinafter abbreviated "AEO") violate the express terms of the Protective Order.

<sup>1</sup> Only one of the two documents appears to have been produced.

Gerald T. Husch  
Stephen R. Thomas  
December 2, 2013  
Page Three

As you know, paragraphs 2 and 3 of the Protective Order define "CONFIDENTIAL" material as "information or tangible things that qualify for protection under standards developed under I.R.C.P. 26(c), including trade secrets or confidential research, development of commercial information." Furthermore, paragraph 23 of the Protective Order limits the designation of materials as AEO to those instances in which "the designating party reasonably believes in good faith that (a) there is a substantial risk that disclosure of such Confidential Material to its competitor would result in irreparable harm or injury to the designating party, and (b) such Confidential Material constitutes a design document or design file prepared by or on behalf of the designating party."

For illustration purposes, we offer you a series of apparently improper confidentiality designations and request an explanation as to why or how the designations comply with the Protective Order. We do so in spite of our belief that Zilog, as the designating party, bears the burden of establishing that its confidentiality designations are proper.

Thus, for example, in the bates range beginning at Z003574, Zilog has designated as "CONFIDENTIAL" a technical paper that is publicly available (as of November 27, 2013) through a basic Google search on the Internet. Clearly, such documents do not qualify for such a designation. Zilog's misapplication of confidentiality designations extends to its "native" electronic files. In the Z005923 folder, Zilog has designated publicly available literature from a variety of companies as AEO. Indeed, Zilog has even designated a quintessential public document – a U.S. patent – as AEO. In addition, Zilog has designated as AEO several seemingly random .gif images of basic screen icons, html help files, and PowerPoint presentations that do not appear proprietary, nor are they labeled as such.

The foregoing and other examples of "native" files that appear to be improperly designated as AEO are highlighted in the enclosed selected pages of the production "indices" that accompanied the CDs designated as Z005293 and Z005294. (The "native" files of concern to us are denoted by hand-placed checkmarks. Typically, we would have identified the files at issue by bates number; however, Zilog made no effort to appropriately label its "native" files thus prompting our additional concerns articulated in Section C below.)

Also, while the "indices" indicate that the files listed therein are covered by a blanket AEO designation, we do not understand that designation to extend to the "indices" themselves. Nevertheless, out of an abundance of caution, we are treating the "indices" as AEO pending confirmation in writing from you that the "indices" are not intended to be AEO records.

In light of the foregoing, we request that Zilog immediately de-designate all of the above referenced documents or files. If Zilog is unwilling to do so, we request that you confer with us by December 9, 2013 with a view towards reviewing the identified records and thereby discuss the propriety of the confidentiality designation at issue as to each.

Gerald T. Husch  
Stephen R. Thomas  
December 2, 2013  
Page Four

**C. IDENTIFICATION / LABELING OF "NATIVE" FILES.**

As part of its "native" file production, Zilog "produced" two CDs labeled as Z005923 and Z005924 both containing thousands of files – 18,211 files in Z005923 and a further 6,698 in Z005924. Zilog apparently made no effort to uniquely identify each "native" file by bates number or otherwise. Consequently, the only way to identify or reference the contents of the CDs is by cumbersome and potentially confusing file paths. This, of course, is unacceptable in that it makes it difficult for any of the parties to this action to specifically identify or refer to any given "native" file at deposition or at hearing before the Court, for example.

Please note that, given the volume of "native" files at issue, ASI is keenly aware of the large amount of resources needed in order to individually append a unique bates number to each "native" file. Indeed, ASI would prefer that the file and folder names be maintained as presented. That being the case and in order to minimize or eliminate that potential confusion, ASI requests that Zilog supplement the two "indices" for purposes of assigning a unique identification or bates number for each electronic file or folder listed therein.

If Zilog is unwilling or unable to do so, please let us know whether it is acceptable for ASI to undertake this task at its discretion and at Zilog's sole expense.

We believe that the proposal above is both workable and balanced. More importantly, it would maintain the integrity of the "native" files by eliminating the need to re-name them.

Please let us know whether Zilog will undertake to augment the "indices" as requested. If you have a different proposal in mind that would achieve the same goal, please advise and let us know how and when Zilog intends to do so.

**D. INACCESSIBILITY OF "NATIVE" FILES.**

Further, our attempts to review Zilog's "native" files, in part to determine their content and assess the propriety of the blanket AEO designation, has been hampered and considerably slowed down by the fact that many of the files apparently call for specialized software.

To the extent that Zilog continues to maintain the position that the "native" files are AEO (and thus precluding preventing ASI from accessing the files), we request that Zilog will make available to this office the necessary software or native application so as to allow us access to the files. As a starting point, please confirm that Zilog will provide this office with software necessary to open Cadence-related files, particularly those bearing .cd%, .cdb and .xx file extensions.

Gerald T. Husch  
Stephen R. Thomas  
December 2, 2013  
Page Five

We believe that these and other files that we cannot access without specialized software used to create such files are likely to show the nature and extent certain design work performed by the Sage defendants. Therefore, it is vital that, at the very least, our office have proper unfettered access to such files.

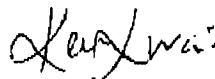
\* \* \*

We look forward to receiving substantive responses regarding the issues raised above on or before **December 9, 2013**. We hope and expect that these and similar outstanding issues will be resolved without need for further motion practice. Please note that in light of the January 10, 2014 scheduled hearing regarding ASI's pending motion to compel against Zilog, ASI reserves the right to supplement and/or "amend" that motion in order to raise any and all unresolved outstanding issues outlined above.

In closing, we appreciate your continued cooperation in this matter. Please let me know if you have any questions.

Sincerely,

PARSONS BEHLE & LATIMER



Kennedy K. Luvai

KKL:vrg

Enclosure

cc: John N. Zarian

JAN 03 2014

CHRISTOPHER D. RICH, Clerk  
By JERI HEATON  
DEPUTY

Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
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Facsimile (208) 385-5384  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

Case No. CV OC 1123344

**DECLARATION OF DAN EATON IN  
OPPOSITION TO AMERICAN  
SEMICONDUCTOR, INC.'S  
RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC.**

**DECLARATION OF DAN EATON IN OPPOSITION TO AMERICAN  
SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL AGAINST  
DEFENDANT ZILOG, INC. - 1**

ORIGINAL  
000640

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

DAN EATON declares and states as follows:

1. I am now and have been since 2009 Vice President and General Counsel of the Defendant, Zilog, Inc. ("Zilog"). Prior to that time, I was employed by Zilog as its Director of Intellectual Property. I hold a juris doctorate in Intellectual Property Law from Santa Clara University School of Law. I also hold a Bachelor of Science in Electrical Engineering from New Mexico State University. I am an active member in good standing of the California State Bar.

2. I am making this declaration on the basis of my personal knowledge as a Zilog employee and in opposition to Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc. ("ASI's Renewed Motion to Compel"), filed herein on or about December 27, 2013.

3. In ASI's Renewed Motion to Compel, ASI alleges:

[W]ith respect to certain "native" electronic files produced on October 7, 2013, ASI submits that Zilog should be directed to make available the necessary specialized software to allow counsel for ASI to review such files.

ASI's Renewed Motion to Compel, p. 2. I assume that ASI's is referring to software required to open Cadence-related files, based on ASI's counsel's correspondence of December 2, 2013, to Zilog's counsel, wherein ASI's counsel states:



[P]lease confirm that Zilog will provide this office with software necessary to open Cadence-related files, particularly those bearing .cd%, cdb and .xx file extensions.

Declaration of Kennedy K. Luvai in Support of Plaintiff American Semiconductor, Inc.'s  
Renewed Motion to Compel Against Defendant Zilog, Inc., Ex. A., p. 4, § D.

4. There is a substantial issue as to whether Zilog may lawfully provide ASI's counsel with the Cadence software requested by ASI because Zilog does not own the requested software. Zilog licenses the software necessary to open its Cadence-related files, including those bearing .cd%, cdb and .xx file extensions, from Cadence Design Systems, pursuant to a written license agreement.

5. That license agreement ("Agreement") between Cadence Design Systems and Zilog is based on a form provided by Cadence Design Systems to Zilog and states in pertinent part that:

(a) "The Licensed Program . . . [is] the confidential and proprietary property of Cadence [Design Systems] or third parties from whom Cadence [Design Systems] has obtained rights."

(b) "Cadence [Design Sytems] grants and [Zilog] accepts, subject to this Agreement, a limited license to internally use each Licensed Program on the Designated Equipment at the Designated Site . . . ."

(c) "Each license granted hereunder authorizes only [Zilog's] Licensed Use of the Licensed Program(s) on specifically identified Designated Equipment at the specifically identified Designated Site."

(d) The "Designated Site" means "the specific address of [Zilog's] facility consisting of one or more buildings within a radius of one mile of where the Designated Equipment upon which the Licensed Programs are installed."

(e) Each "Licensed Program" is licensed to Zilog "solely for [Zilog's] internal purposes."

(f) "Documentation" means "any and all information, written or otherwise, provided to [Zilog] by Cadence [Design Systems] describing the Licensed Program, its operation and matters related to its Licensed Use . . . in published written material, on magnetic media or communicated by electronic means."

(g) The "Licensed Use" is restricted to "the purpose of assisting Zilog in the design, test, or manufacture of electronic elements, circuits, or systems."

(h) Zilog "shall not sublicense, modify, or permit third parties to use or otherwise access the Licensed Program or the Documentation."

(i) "[Zilog] may make a reasonable number of copies of a Licensed Program" but may do so "only for archival purposes and only for use as back-ups when the Licensed Program is not operational."

(j) "This Agreement . . . may be terminated by Cadence [Design Systems] . . . in the event of a material breach by [Zilog] of any provision of this Agreement where [Zilog] fails to correct such breach within 30 days of written notice . . . ."

6. In filing this declaration, Zilog does not waive its rights to object to production of the Agreement to any party to this litigation or any other third party, except that

Zilog will voluntarily provide a copy of the Agreement to the Court for the Court's review in camera at the Court's request.

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 2 day of January, 2014.

  
\_\_\_\_\_  
Dan Eaton

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2014, I caused a true and correct copy of the foregoing **DECLARATION OF DAN EATON IN OPPOSITION TO AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL AGAINST DEFENDANT ZILOG, INC.** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
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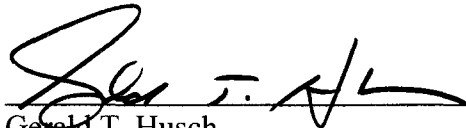
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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Gerald T. Husch

JAN 03 2014

CHRISTOPHER D. RICH, Clerk  
By JERI HEATON  
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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

Case No. CV OC 1123344

**DEFENDANT ZILOG'S  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S  
RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC.**

**DEFENDANT ZILOG'S MEMORANDUM IN OPPOSITION TO PLAINTIFF  
AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC. - 1**

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v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

COMES NOW the Defendant Zilog, Inc. ("Zilog"), by and through its undersigned counsel, and submits this memorandum in opposition to Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc. ("ASI's Renewed Motion to Compel"). Filed herewith are: (a) the Declaration of Dan Eaton in Opposition to Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc. (the "Eaton Declaration"); and (b) the Declaration of Ramon Lopez in Opposition to Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc. (the "Lopez Declaration").

Plaintiff American Semiconductor, Inc. ("ASI") first "seeks an order directing Zilog to re-designate its October 7, 2013 production and any subsequent productions in a manner consistent with the protective order in place in this action." ASI's Renewed Motion to Compel, p. 2. In essence, ASI is seeking an order requiring Zilog to review over 36,000 pages of documents or electronic files to determine whether Zilog's original designation of certain of those documents as "Confidential" or "Confidential and Attorney's Eyes Only" was correct. As shown by the Lopez Declaration, Zilog has made a reasonable, good faith effort to correctly designate Zilog's production documents in accordance with the Court's Protective Order. If, as ASI contends, Zilog has mistakenly labeled a document as "Confidential" when ASI has been able to find a copy of the document in the public domain, there is nothing in the Court's

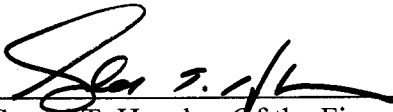
Protective Order that would prevent ASI from using that copy. If ASI believes that other documents have been improperly designated as "Confidential" or "Confidential and Attorneys' Eyes Only," the appropriate procedure would be for ASI to identify those documents by bates number and provide Zilog with the reason or reasons that ASI believes the documents were not properly designated, so that Zilog may consider re-designation on an individualized basis. ASI has already specifically identified several hundred documents that ASI contends Zilog improperly designated as "Confidential and Attorneys' Eyes Only," and Zilog's counsel has voluntarily reviewed those documents and, where appropriate, changed the designation on some of those documents. It would be unduly burdensome to require Zilog to review all of the over 36,000 pages of documents that it has produced to determine if some documents have been improperly designated.

ASI next seeks an order that Zilog be directed to make available to ASI the software necessary to open certain "native" files that Zilog produced to ASI on October 7, 2013. ASI's Renewed Motion to Compel, p. 2. Zilog has no legal obligation to provide such software to ASI. Moreover, as explained in the Eaton Declaration, Zilog does not own such software and the licensing agreement giving Zilog the right to use the software limits Zilog's right to use the software to internal use on Designated Equipment at the Designated Site and prohibits Zilog from permitting third parties to use or otherwise access the software. ASI has made no showing that it has been unable to obtain the use of the software in question from a consultant or other source.

WHEREFORE, Zilog respectfully requests the Court to deny ASI's Renewed Motion to Compel Against Zilog.

DATED this 3rd day of January, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2014, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG'S MEMORANDUM IN OPPOSITION TO PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL AGAINST DEFENDANT ZILOG, INC.** to be served by the method indicated below, and addressed to the following:

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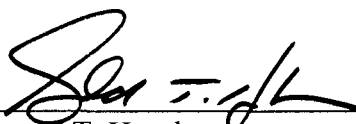
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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*Attorneys for Plaintiff and Counterdefendant  
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
corporation; ZILOG, INC., a Delaware corporation;  
DAVID ROBERTS; GYLE YEARSLEY; RUSSELL  
LLOYD; WILLIAM TIFFANY; EVELYN  
PERRYMAN; and Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**REPLY IN FURTHER SUPPORT  
OF PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S  
RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC.**

RELATED COUNTER ACTIONS

**REPLY IN FURTHER SUPPORT OF PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL AGAINST  
DEFENDANT ZILOG, INC.**

PAGE 1

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Pursuant to Rule 37 of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") respectfully submits the following reply memorandum in further support of its Renewed Motion to Compel against Defendant Zilog, Inc.

### INTRODUCTION

It is undisputed that Zilog has (improperly) designated substantially *all* of its October 2013 production as "CONFIDENTIAL ATTORNEYS EYES ONLY" (hereinafter, "AEO"). It is also well settled that such a highly restrictive designation is to be used sparingly and judiciously. Clearly, Zilog did not do so here, as evidenced by the sheer magnitude of AEO's designations and the many examples of publicly available records that Zilog has indiscriminately cloaked as highly sensitive and highly confidential. Under the circumstances, Zilog has failed to satisfy its burden properly to designate its October 2013 production, and the Court now should compel Zilog to designate its production appropriately.

Not only has Zilog sought to preclude ASI from reviewing what are otherwise non-AEO records, but Zilog also seeks to take advantage of the fact that a significant portion of its "native" production requires access to specialized software in order to access certain files. In opposition to this motion, Zilog's arguments simply miss the mark, because Zilog focuses unreasonably on just one software suite while failing to address the larger issues (and other types of software) raised by ASI and at issue in this motion. For that reason, among others, the Court should compel Zilog to take reasonable steps to allow for the review of any and all files requiring specialized software by ASI's counsel (thereby avoiding extraordinary expense) – particularly since Zilog continues to impose an improper *blanket* AEO designation of its entire "native" production of documents.

Accordingly, ASI submits that this renewed motion should be granted in its entirety.

## ARGUMENT

### **I. ZILOG HAS FAILED TO MEET ITS BURDEN OF ESTABLISHING THE PROPRIETY OF ITS AEO CONFIDENTIALITY DESIGNATIONS.**

In its opening memorandum, ASI provided authority establishing that it is Zilog's burden to ensure the propriety of its confidentiality designations. *See THK America, Inc. v. NSK Co., Ltd.*, 157 F.R.D. 637, 647 (N.D. Ill. 1993); *Quotron Systems, Inc. v. Automatic Data Processing, Inc.*, 141 F.R.D. 37, 40 (S.D.N.Y. 1992). Zilog does not dispute these instructive authorities, nor does it make submit any authority to the contrary. In effect, Zilog concedes that it has the burden of properly designating its documents – especially with regard to highly restrictive AEO designation — a burden that has failed to meet.

To be sure, Zilog claims to have “made a reasonable, good-faith effort” correctly to designate its produced documents. (Opp. Memo. at 3) However, the fact that virtually *all* of Zilog's October 2013 production was designated as AEO belies Zilog's assertion. Significantly, Zilog makes no effort to explain how the “absurdly high” proportion (*i.e.* 99 %) of its October 2013 production qualifies for the highest confidentiality designation allowed under the Protective Order. While Zilog makes generalized statements about the propriety of its designations, it tacitly admits, in the same breadth, to improper over-designation by claiming to have re-designated a number of documents at ASI's insistence. Clearly, Zilog acted improperly.

Further, Zilog's assertion that “[i]t would be unduly burdensome” for it to review all of its produced files for proper designation is unavailing in light of the apparent blanket and non-particularized designation. Improperly, Zilog urges an arrangement in which ASI's review of the October 2013 production is indefinitely hobbled, inasmuch as Zilog suggests that *ASI* continue to identify examples of over-designation as this case progresses. Remarkably, Zilog actually posits

that “the appropriate procedure would be for ASI to [continue to] identify [documents] on an

**REPLY IN FURTHER SUPPORT OF PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL AGAINST DEFENDANT ZILOG, INC.**

PAGE 3

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individualized basis.” (Opp. Memo. at 3). In other words, Zilog appears to be rest its opposition, in part, on the argument that a proper review of its October 2013 production of a party’s own documents is too big a job for Zilog (its technical expertise notwithstanding), but should not be so for ASI’s legal counsel (unassisted by clients precluded from reviewing AEO documents). Of course, the burden of proper designation rests with the *designating party*.

In light of the facial over-designation by Zilog of its October 2013 production as AEO, it would be unfair for ASI to have to hire an expert – at great expense – in order to compel Zilog to fulfill its obligation to properly designate its productions. Clearly, this over-designation has only served to preclude ASI from accessing or reviewing records that are properly non-AEO. Doing so does not serve any purpose in this case other than to slow the process and increase costs.

## **II. ZILOG’S RESPONSE REGARDING ACCESSIBILITY OF PROPRIETARY FILES MISSES THE MARK**

As with the concerns raised concerning over-designation, Zilog takes an unreasonably narrow view that disregard the burdens imposed on ASI by the inaccessibility of numerous “native” files produced by Zilog in October 2013. In opposition, Zilog elects to address only *one* of the software types mentioned by ASI (by way of example) and, rather conveniently, fails to address the *dozens* of other software programs that would be required to access hundreds, if not thousands, of the “native” files produced by Zilog.

Unfortunately, this situation is further compounded by Zilog’s improper over-designation of all such “native” files as AEO – thus effectively precluding ASI from using its software and personnel (to the extent it has similar or compatible software) to access at least some of these files. Under the circumstances, and set forth in ASI’s moving papers, Zilog should be compelled to take all reasonable steps to facilitate the review of files requiring specialized software.

**CONCLUSION**

For all of the foregoing reasons, and for the reasons set forth in ASI's moving papers, the Court should grant the relief requested as part of ASI's renewed motion to compel against Zilog.

DATED this 7th day of January, 2014.

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of January, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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LLC, David Roberts, Gyle Yearsley and William  
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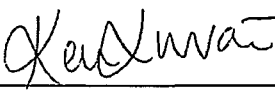
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\_\_\_\_\_  
John N. Zarian

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A.M. \_\_\_\_\_ P.M. 1:58

JAN 23 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ORDER RE: PLAINTIFF'S  
DISCOVERY MOTIONS**



On January 10, 2014, the Court heard oral argument on Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc., as well as Plaintiff American Semiconductor, Inc.'s Motion to Compel Rule 30(b)(6) Depositions of Defendants Sage Silicon Solutions, LLC, and Zilog, Inc. All parties were represented by counsel of record. Based upon the parties' memoranda and declarations filed in connection with the above motions, the oral argument of counsel, the findings made by the Court on the record at the hearing which are incorporated herein, and for good cause appearing therefor,

**IT IS HEREBY ORDERED** that Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc., is **DENIED** without prejudice.

**IT IS FURTHER ORDERED** that Plaintiff American Semiconductor, Inc.'s Motion to Compel Rule 30(b)(6) Depositions of Defendants Sage Silicon Solutions, LLC, and

*Jm* Zilog, Inc., is hereby ~~DENIED~~ <sup>*in larger part*</sup> without prejudice on the grounds that <sup>*such Order compelling is unnecessary in that*</sup> the parties have agreed that *Jm* the Rule 30(b)(6) deposition of Sage Silicon Solutions, LLC and the Rule 30(b)(6) deposition of Zilog, Inc. shall commence on February 11, 2014, and February 12, 2014, respectively. *Jm*

**IT IS FURTHER ORDERED** that the Rule 30(b)(6) deposition of Zilog, Inc. shall commence in Boise, Idaho starting at 9.00 a.m. (MST) on February 12, 2014 and that Zilog, Inc., shall produce at least three (3) corporate designees to testify on its behalf on that date.

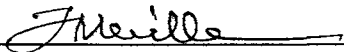
**IT IS FURTHER ORDERED** that Zilog, Inc.'s request, made orally at hearing, that American Semiconductor, Inc., be required to bear the travel and hotel expenses incurred by or on behalf of Zilog, Inc.'s witnesses to appear and testify at the Rule 30(b)(6) deposition of Zilog, Inc., is **DENIED** without prejudice.

**FINALLY, IT IS ORDERED** that a status conference shall be held on Thursday, March 6, 2014 at 3.30 p.m.

This Order hereby incorporates by reference the Court's findings and reasons  
stated orally on the record during the hearing on January 10, 2014.

*JM*

DATED this 22<sup>nd</sup> day of January, 2014.

  
\_\_\_\_\_  
The Honorable Thomas F. Neville  
District Judge

## CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_ day of January, 2014, I caused a true and correct copy of the foregoing **ORDER RE: PLAINTIFF'S DISCOVERY MOTIONS** to be served by the method indicated below, and addressed to the following:

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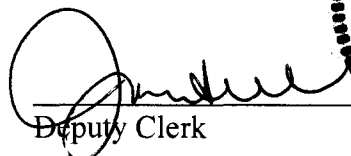
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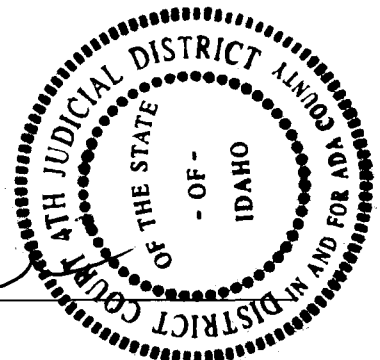
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Deputy Clerk



Neville Janet  
2/28/14 JT

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

FEB 27 2014

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Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
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Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

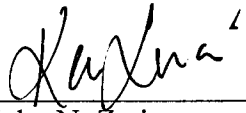
**NOTICE OF SERVICE OF  
SUBPOENA TO CADENCE DESIGN  
SYSTEMS, INC.**

42

NOTICE IS HEREBY GIVEN THAT on February 27, 2014, Plaintiff American Semiconductor, Inc., served a Subpoena Duces Tecum on Cadence Design Systems, Inc., a copy of which and this Notice were served by the methods indicated below and addressed to the following at the addresses shown below:

<p>Gary L. Cooper  COOPER &amp; LARSEN CHARTERED  151 North Third Avenue, 2nd Floor  P.O. Box 4229  Pocatello, ID 83205-4229  Telephone: (208) 235-1145  Facsimile: (208) 235-1182  <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid  <input type="checkbox"/> Hand Delivered  <input checked="" type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  Email: gary@cooper-larsen.com  barbie@cooper-larsen.com</p>
<p>Stephen R. Thomas  Gerald T. Husch  MOFFATT THOMAS BARRETT ROCK  &amp; FIELDS, CHTD.  P.O.. Box 829  Boise, ID 83701-0829  Telephone: (208) 345-2000  Facsimile: (208) 385-5384  <i>Attorneys for Defendant Zilog, Inc.</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid  <input checked="" type="checkbox"/> Hand Delivered  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  Email: srt@moffatt.com  gth@moffatt.com</p>
<p>Russell G. Metcalf  METCALF LAW OFFICE, PLLC  P.O. Box 385  Homedale, ID 83628  Telephone: (208) 337-4945  Facsimile: (208) 337-4854  <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid  <input type="checkbox"/> Hand Delivered  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Facsimile  Email: rmetcalf@cableone.net</p>

PARSONS BEHLE & LATIMER

By   
\_\_\_\_\_  
John N. Zarian  
Kennedy K. Luvai  
*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

John N. Zarian, ISB #7390  
Kennedy K. Luvai, ISB#9924  
PARSONS BEHLE & LATIMER  
960 Broadway Avenue, Suite 250  
Boise, Idaho 83706  
Telephone: 208.562.4900  
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jzarian@parsonsbehle.com  
kluvai@parsonsbehle.com

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

NO. \_\_\_\_\_  
A.M. 1137 FILED \_\_\_\_\_ P.M. \_\_\_\_\_  
**MAR 21 2014**  
CHRISTOPHER D. RICH, Clerk  
By CHRISTINE SWEET  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 112334

*The Honorable Thomas F. Neville*

**NOTICE OF SERVICE OF  
SUBPOENA DUCES TECUM TO  
SYNOPSYS, INC.**

NOTICE IS HEREBY GIVEN THAT Plaintiff American Semiconductor, Inc. served a Subpoena Duces Tecum on Synopsys, Inc. and a copy of which on counsel as indicated below on March 20, 2014. A copy of this Notice was served on March 21, 2014, by the methods indicated below and addressed to the following at the addresses shown below:

<p>Gary L. Cooper  COOPER &amp; LARSEN CHARTERED  151 North Third Avenue, 2nd Floor  P.O. Box 4229  Pocatello, ID 83205-4229  Telephone: (208) 235-1145  Facsimile: (208) 235-1182  <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid  <input type="checkbox"/> Hand Delivered  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Facsimile  Email: gary@cooper-larsen.com  barbie@cooper-larsen.com</p>
<p>Stephen R. Thomas  Gerald T. Husch  MOFFATT THOMAS BARRETT ROCK  &amp; FIELDS, CHTD.  P.O.. Box 829  Boise, ID 83701-0829  Telephone: (208) 345-2000  Facsimile: (208) 385-5384  <i>Attorneys for Defendant Zilog, Inc.</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid  <input type="checkbox"/> Hand Delivered  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Facsimile  Email: srt@moffatt.com  gth@moffatt.com</p>
<p>Russell G. Metcalf  METCALF LAW OFFICE, PLLC  P.O. Box 385  Homedale, ID 83628  Telephone: (208) 337-4945  Facsimile: (208) 337-4854  <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid  <input type="checkbox"/> Hand Delivered  <input type="checkbox"/> Overnight Mail  <input checked="" type="checkbox"/> Facsimile  Email: rmetcalf@cableone.net</p>

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

**NOTICE OF SERVICE OF SUBPOENA DUCES TECUM TO SYNOPSYS, INC. - 1**

4821-8883-1769.1

000665



APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

John N. Zarian, ISB #7390  
Kennedy K. Luvai, ISB#8824  
PARSONS BEHLE & LATIMER  
800 W. Main Street, Suite 1300  
Boise, Idaho 83702  
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jzarian@parsonsbehle.com  
kluvai@parsonsbehle.com

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

**PLAINTIFF'S MOTIONS TO  
COMPEL: (1) PRODUCTION OF  
DOCUMENTS BY ZILOG; AND (2)  
RESUMPTION OF ZILOG'S RULE  
30(b)(6) DEPOSITION**

Pursuant to Rule 37 of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") hereby respectfully moves for an order (a) compelling defendant Zilog, Inc. ("Zilog") to produce improperly withheld records within 14 days of the Court's ruling and (b) compelling the resumption of the Rule 30(b)(6) deposition of defendant Zilog, Inc. ("Zilog") *in Boise* within 28 days of the Court's ruling in order to allow for: (i) the examination of Zilog's corporate designees as to matters disclosed in untimely produced or improperly withheld records; and (ii) the examination of Zilog's corporate designees as to any remaining matters or topics as set forth in ASI's operative notice of deposition to Zilog. In the alternative, and with regard to the depositions, ASI moves for an order compelling the individual depositions of Zilog's witnesses as to any and all matters disclosed in any untimely produced or improperly withheld records.


The undersigned certifies that he has undertaken to meet and confer, in good faith, with counsel for Zilog in the hopes of resolving this dispute without resort to court intervention. Those efforts have so far been unsuccessful.

In support of the foregoing motion, ASI relies upon this this motion, the accompanying memorandum, the accompanying Declaration of Kennedy K. Luvai, the pleadings and records on file in this matter, all matters which the Court may take judicial notice, such matters as may be presented by counsel at or prior to any hearing, and upon such other evidence or argument as may be considered by the Court prior to ruling on this motion.

**PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY ZILOG;  
AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION. - 1**

DATED: April 18, 2014.

PARSONS BEHLE & LATIMER

By   
\_\_\_\_\_  
John N. Zarian  
Kennedy K. Luvai  
Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

**PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY ZILOG;  
AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION. - 2**

4837-0385-1546.1

000668

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of April, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182

*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: gary@cooper-larsen.com  
barbie@cooper-larsen.com

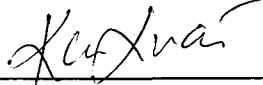
Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854

*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: rmetcalf@cableone.net

Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
*Attorneys for Defendant Zilog, Inc.*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: srt@moffatt.com  
gth@moffatt.com

  
\_\_\_\_\_  
Kennedy K. Luvai

**PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY ZILOG;  
AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION. - 3**

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

John N. Zarian, ISB #7390  
Kennedy K. Luvai, ISB#8824  
PARSONS BEHLE & LATIMER  
800 W. Main Street, Suite 1300  
Boise, Idaho 83702  
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Facsimile: 208.562.4901  
jzarian@parsonsbehle.com  
kluvai@parsonsbehle.com

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

**DECLARATION OF KENNEDY K.  
LUVAI IN SUPPORT OF IN SUPPORT  
OF PLAINTIFF'S MOTIONS TO  
COMPEL: (1) PRODUCTION OF  
DOCUMENTS BY ZILOG; AND (2)  
RESUMPTION OF ZILOG'S RULE  
30(b)(6) DEPOSITION**

I, Kennedy K. Luvai, declare as follows:

1. I am duly licensed to practice law in Idaho and before this Court. I am an attorney with the law firm of Parsons Behle & Latimer, PLC, and one of the attorneys of record for plaintiff American Semiconductor, Inc. ("ASI") in the above-referenced action. I make this declaration based upon my own personal knowledge and, if called upon, could and would testify as to the truth of the statements contained herein.

2. I make this declaration in support of ASI's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition.

3. Attached hereto as **Exhibit A** is a true and correct copy of the Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc. as served on November 22, 2013.

4. Attached hereto as **Exhibit B** is a true and correct copy of the Second Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc. as served on January 14, 2014.

5. Attached hereto as **Exhibit C** is a true and correct conformed copy of the Order Re: Plaintiff's Discovery Motions as entered by the Court on January 23, 2014.

6. Attached hereto as **Exhibit D** is a true and correct copy of the Amended Notice of Designation of Witnesses Re: Second Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc. as served on February 10, 2014.

7. Attached hereto as **Exhibit E** is a true and correct copy of an e-mail exchange amongst counsel whereby Zilog indicated its preference as to the order of examination of its corporate designees in connection with the commencement of its Rule 30(b)(6) deposition on February 12, 2014.

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF IN SUPPORT OF  
PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY  
ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION - 1**

8. Attached hereto as **Exhibit F** is a true and correct copy of the Third Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc. as served on February 21, 2014.

9. Attached hereto as **Exhibit G** is a true and correct copy Defendant Zilog, Inc.'s Fifth Supplemental Responses to Plaintiff's First Set of Requests for Production as served on March 3, 2014, along with true and correct photocopy image made by my office of the CD containing the documents produced.

10. Without waiving ASI's rights in connection with the Zilog's untimely March 3, 2014 production, counsel for ASI proceeded with the examination of Mr. David Staab as part of the resumption of Zilog's Rule 30(b)(6) deposition on March 4, 2014.

11. Attached hereto as **Exhibit H** is a true and correct copy of a letter dated March 14, 2014 that my office sent to opposing counsel inquiring as to their availability and that of Mr. Rick White in order to facilitate the resumption of Zilog's suspended Rule 30(b)(6) deposition.

12. Attached hereto as **Exhibit I** is a true and correct copy of a letter dated March 18, 2014 my office received from Zilog's counsel responding to ASI's inquiry as to counsel's and Mr. White's availability as set forth in the March 14, 2014 correspondence attached above as Exhibit H.

13. Attached hereto as **Exhibit J** is a true and correct copy of a follow-up letter dated March 19, 2014 that my office sent to counsel for Zilog further explaining ASI's position that Zilog was obligated to either produce Mr. White (at its expense) to be deposed in Boise or designate a replacement witness if Mr. White was unavailable.

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF IN SUPPORT OF  
PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY  
ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION - 2**

14. Attached hereto as **Exhibit K** is a true and correct copy of correspondence dated March 18, 2014 that my office sent to Zilog's counsel explaining that Zilog properly bears the costs and expenses associated with the production of its corporate designees to be examined as of its Rule 30(b)(6) deposition. This letter is incorporated by reference into the March 19, 2014 letter attached above as Exhibit J.

15. Zilog failed to produce a witness to testify as to the topics or matters as to which Mr. White has been designated, and instead purported to file a motion for protective order on April 1, 2014 which was unsupported by memoranda or affidavits.

16. Attached hereto as **Exhibit L** are true and correct copies of excerpts from the Rule 30(b)(6) deposition of Zilog taken on March 4, 2014 with Mr. Staab testifying as the corporate designee.

17. Attached hereto as **Exhibit M** is a true and correct copy of Plaintiff's First Set of Requests for Production to Defendant Zilog, Inc. as served on July 12, 2013.

18. Attached hereto as **Exhibit N** is a true and correct copy of the Declaration of Dan Eaton in Opposition to American Semiconductor, Inc.'s Renewed Motion to Compel against Defendant Zilog, Inc. as filed by Zilog with the Court on or about January 3, 2014. In this declaration, Mr. Eaton relies upon and quotes extensively from a discoverable and relevant licensing agreement that Zilog entered into with Cadence Design Systems, Inc. ("Cadence"). In spite of its heavy reliance on that agreement, Zilog refused and continues to refuse to produce it.

19. Attached hereto as **Exhibit O** is a true and correct copy of Plaintiff's Second Set of Requests for Production to Defendant Zilog, Inc. as served on January 13, 2014 seeking

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF IN SUPPORT OF  
PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY  
ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION - 3**



production of, among other records, relevant and discoverable licensing agreements that Zilog executed with Cadence and Synopsys, Inc. ("Synopsys"), among others.

20. Attached hereto as **Exhibit P** is a true and correct copy of Zilog, Inc.'s Responses to Plaintiff's Second Set of Requests for Production as served on or about February 12, 2014.

21. Attached hereto as **Exhibit Q** is a true and correct copy of a letter dated February 20, 2014 to opposing counsel providing notice regarding and enclosing a copy of a subpoena that was eventually served on Cadence on February 27, 2014 following Zilog's refusals to produce the relevant licensing records. Zilog did not object to the issuance or service of the subpoena. While Cadence responded by producing some documents on March 6, 2014, it has yet to produce, among other records, the agreement Mr. Eaton testified to in the declaration attached above as Exhibit N.

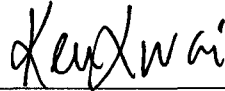
22. Attached hereto as **Exhibit R** is a true and correct copy of a letter dated March 13, 2014 to opposing counsel providing notice regarding and enclosing a copy of a subpoena that was eventually served on Synopsys on March 20, 2014 following Zilog's refusals to produce the relevant licensing records. Zilog did not object to the issuance or service of the subpoena. Synopsys has thus far refused to comply with the subpoena and has not produced the requested records.

23. Attached hereto as **Exhibit S** is a true and correct copy of a letter to counsel for Zilog dated March 19, 2014 following up on and requesting immediate production of certain Zilog licensing agreements with CAST, Inc. and records comprising the "Shared Directory" as identified by its corporate designee, Mr. Staab, as part of Zilog's on-going Rule 30(b)(6) deposition.

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF IN SUPPORT OF  
PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY  
ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION - 4**

I declare under the penalty of perjury under the laws of the state of Idaho that the foregoing is true and correct.

Executed on this 18th day of April, 2014, at Boise, Idaho.



---

Kennedy K. Luvai

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF IN SUPPORT OF  
PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY  
ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION - 5**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of April, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182

*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
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<input checked="" type="checkbox"/>	Email: gary@cooper-larsen.com barbie@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
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*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
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<input checked="" type="checkbox"/>	Email: rmetcalf@cableone.net

Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O.. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
*Attorneys for Defendant Zilog, Inc.*

<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: srt@moffatt.com gth@moffatt.com

*Kennedy K. Luvai*

Kennedy K. Luvai

**DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF IN SUPPORT OF  
PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY  
ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION - 6**

## **EXHIBIT A**

John N. Zarian, ISB #7390  
Kennedy K. Luvai, ISB#9924  
PARSONS BEHLE & LATIMER  
960 Broadway Avenue, Suite 250  
Boise, Idaho 83706  
Telephone: 208.562.4900  
Facsimile: 208.562.4901  
jzarian@parsonsbehle.com  
kluvai@parsonsbehle.com

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 112334

*The Honorable Thomas F. Neville*

**NOTICE OF RULE 30(b)(6)  
DEPOSITION OF DEFENDANT  
ZILOG, INC.**

**NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT ZILOG, INC.**

000678

**PLEASE TAKE NOTICE** that, pursuant to Idaho Rule of Civil Procedure 30(b)(6) ("Rule 30(b)(6)"), plaintiff, American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, will take the deposition upon oral examination of defendant Zilog, Inc. ("Zilog"), through one or more of its officers, directors, managing agents, employees, or other persons designated to testify on its behalf, with respect to each of the subject matters listed below.

This deposition will take place under oath and before a duly authorized notary public, or other person authorized by law to administer oaths. The deposition will be recorded by stenographic means by a court reporter and may be recorded by audio and visual means by a videographer. The deposition will begin at **9.00 a.m.** on **Thursday, December 5, 2013** at the offices of **Parsons, Behle & Latimer, PLC** located at **960 Broadway Avenue, Suite 250, Boise, Idaho 83706** and shall continue from day to day thereafter until concluded. Zilog is requested to produce the witness or witnesses at the indicated time and place and all parties and counsel of record are invited to attend and ask questions.

ASI requests that, at least five (5) business days prior to the noticed deposition and pursuant to Rule 30(b)(6), Zilog provide counsel for ASI with a written designation of the names and positions of all officers, directors, managing agents, employees, or other persons designated to testify on its behalf with respect to each of the subject matters listed below and to specify as to which matters each person so designated will testify.

ASI reserves the right to supplement this deposition notice to set forth additional areas of testimony.

## DEPOSITION TOPICS

1. Zilog's corporate structure, business model and operations.
2. Solicitation or acceptance of design or related services offered by Sage Silicon Solutions, LLC ("Sage") and/or David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany and Evelyn Perryman (the "Individuals") at any time.
3. Relationships with Sage and the Individuals.
4. Access by Sage and Individuals to Zilog's physical facilities and/or computing assets in connection with their provision of design and related services to Zilog.
5. Communications with regarding Sage and Individuals' provision of design or related services to Zilog.
6. Solicitation or acceptance of design or related services offered by ASI at any time.
7. Solicitation or acceptance of design or related services offered by third party providers including, without limitation, the Embedded Resource Group, Inc..
8. Relationship with Rick White.
9. Communications regarding ASI and/or its proprietary technologies, intellectual property or trade secrets including, without limitation, communications occurring or which occurred between Zilog and Lattice Semiconductor.
10. Knowledge of the Individuals' relationships, employment or otherwise, with ASI.
11. Negotiations or discussions with Sage and/or the Individuals in connection with their provision of design and related services to Zilog.
12. Use of ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

13. Benefits derived from use of ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

14. Products or services incorporating design and related services provided to Zilog by Sage and/or the Individuals.

15. Use of non-ASI proprietary technologies, intellectual property, trade secrets or other similar intangible assets as part of products or services that incorporate design and related services provided to Zilog by Sage and/or the Individuals.

16. Harm or damage sustained by ASI as a result of Zilog's ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

17. Payments made to Sage and/or the Individuals for design or related services provided to Zilog.

18. Marketing or promotion of any products or services incorporating design or related services provided to Zilog by Sage and/or the Individuals.

19. Communications with Sage and/or the Individuals regarding this litigation or the subject matter of this litigation.

20. Communications with third parties concerning this litigation or the subject matter of this litigation.

21. Investigations conducted in connection with any allegations or factual assertions made by Zilog in this litigation.

22. Lawsuits in which Zilog has been name or participated as a party.



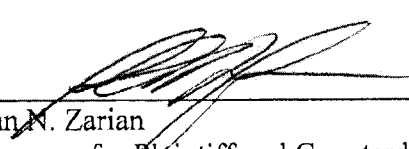
23. Efforts to locate, review and produce records responsive to ASI's discovery requests.

24. Record retention and storage policies or practices including, but not limited to, electronic or hard copy archiving.

DATED THIS 22nd day of November, 2013.

PARSONS BEHLE & LATIMER

By

  
John N. Zarian

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of November, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
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*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

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Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
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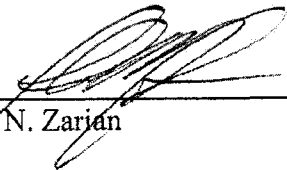
*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
☐ Email: rmetcalf@cableone.net

Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384

*Attorneys for Defendant Zilog, Inc.*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
☐ Email: gth@moffatt.com

  
\_\_\_\_\_  
John N. Zarian

## **EXHIBIT B**

John N. Zarian, ISB #7390  
Kennedy K. Luvai, ISB#9924  
PARSONS BEHLE & LATIMER  
960 Broadway Avenue, Suite 250  
Boise, Idaho 83706  
Telephone: 208.562.4900  
Facsimile: 208.562.4901  
jzarian@parsonsbehle.com  
kluvai@parsonsbehle.com

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 112334

*The Honorable Thomas F. Neville*

**SECOND AMENDED NOTICE OF  
RULE 30(b)(6) DEPOSITION OF  
DEFENDANT ZILOG, INC.**

**SECOND AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC.**

PLEASE TAKE NOTICE that, pursuant to Idaho Rule of Civil Procedure 30(b)(6) ("Rule 30(b)(6)"), plaintiff, American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, will take the deposition upon oral examination of defendant Zilog, Inc. ("Zilog"), through one or more of its officers, directors, managing agents, employees, or other persons designated to testify on its behalf, with respect to each of the subject matters listed below.

This deposition will take place under oath and before a duly authorized notary public, or other person authorized by law to administer oaths. The deposition will be recorded by stenographic means by a court reporter and may be recorded by audio and visual means by a videographer. The deposition will begin at 9:00 a.m. on **Wednesday, February 12, 2014** at the offices of **Parsons, Behle & Latimer, PLC** located at **800 W Main Street, Suite 1300, Boise, Idaho 83702** and shall continue from day to day thereafter until concluded. Zilog is requested to produce the witness or witnesses at the indicated time and place and all parties and counsel of record are invited to attend and ask questions.

ASI requests that, at least five (5) business days prior to the noticed deposition and pursuant to Rule 30(b)(6), Zilog provide counsel for ASI with a written designation of the names and positions of all officers, directors, managing agents, employees, or other persons designated to testify on its behalf with respect to each of the subject matters listed below and to specify as to which matters each person so designated will testify.

ASI reserves the right to supplement this deposition notice to set forth additional areas of testimony.

**SECOND AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC. - 1**

## DEPOSITION TOPICS

1. Zilog's corporate structure, business model and operations.
2. Solicitation or acceptance of design or related services offered by Sage Silicon Solutions, LLC ("Sage") and/or David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany and Evelyn Perryman (the "Individuals") at any time.
3. Relationships with Sage and the Individuals.
4. Access by Sage and Individuals to Zilog's physical facilities and/or computing assets in connection with their provision of design and related services to Zilog.
5. Communications with regarding Sage and Individuals' provision of design or related services to Zilog.
6. Solicitation or acceptance of design or related services offered by ASI at any time.
7. Solicitation or acceptance of design or related services offered by third party providers including, without limitation, the Embedded Resource Group, Inc..
8. Relationship with Rick White.
9. Communications regarding ASI and/or its proprietary technologies, intellectual property or trade secrets including, without limitation, communications occurring or which occurred between Zilog and Lattice Semiconductor.
10. Knowledge of the Individuals' relationships, employment or otherwise, with ASI.
11. Negotiations or discussions with Sage and/or the Individuals in connection with their provision of design and related services to Zilog.
12. Use of ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

13. Benefits derived from use of ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

14. Products or services incorporating design and related services provided to Zilog by Sage and/or the Individuals.

15. Use of non-ASI proprietary technologies, intellectual property, trade secrets or other similar intangible assets as part of products or services that incorporate design and related services provided to Zilog by Sage and/or the Individuals.

16. Harm or damage sustained by ASI as a result of Zilog's ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

17. Payments made to Sage and/or the Individuals for design or related services provided to Zilog.

18. Marketing or promotion of any products or services incorporating design or related services provided to Zilog by Sage and/or the Individuals.

19. Communications with Sage and/or the Individuals regarding this litigation or the subject matter of this litigation.

20. Communications with third parties concerning this litigation or the subject matter of this litigation.

21. Investigations conducted in connection with any allegations or factual assertions made by Zilog in this litigation.

22. Lawsuits in which Zilog has been name or participated as a party.

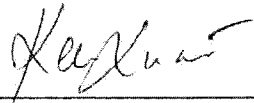
**SECOND AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC. - 3**

23. Efforts to locate, review and produce records responsive to ASI's discovery requests.

24. Record retention and storage policies or practices including, but not limited to, electronic or hard copy archiving.

DATED THIS 14th day of January, 2014.

PARSONS BEHLE & LATIMER

By   
Kennedy K. Luvai  
Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of January, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182

*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: gary@cooper-larsen.com barbie@cooper-larsen.com

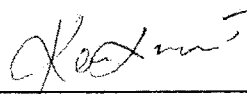
Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854

*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: rmetcalf@cableone.net

Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
*Attorneys for Defendant Zilog, Inc.*

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email: srt@moffatt.com gth@moffatt.com

  
\_\_\_\_\_  
Kennedy K. Luvai

## **EXHIBIT C**

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 1:58

JAN 23 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ORDER RE: PLAINTIFF'S  
DISCOVERY MOTIONS**

On January 10, 2014, the Court heard oral argument on Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc., as well as Plaintiff American Semiconductor, Inc.'s Motion to Compel Rule 30(b)(6) Depositions of Defendants Sage Silicon Solutions, LLC, and Zilog, Inc. All parties were represented by counsel of record. Based upon the parties' memoranda and declarations filed in connection with the above motions, the oral argument of counsel, the findings made by the Court on the record at the hearing which are incorporated herein, and for good cause appearing therefor,

**IT IS HEREBY ORDERED** that Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc., is **DENIED** without prejudice.

*Jm* **IT IS FURTHER ORDERED** that Plaintiff American Semiconductor, Inc.'s Motion to Compel Rule 30(b)(6) Depositions of Defendants Sage Silicon Solutions, LLC, and Zilog, Inc., is hereby **DENIED** *in larger part* without prejudice *such Order compelling is unnecessary in that* on the grounds that the parties have agreed that *Jm* the Rule 30(b)(6) deposition of Sage Silicon Solutions, LLC and the Rule 30(b)(6) deposition of Zilog, Inc. shall commence on February 11, 2014, and February 12, 2014, respectively. *Jm*


**IT IS FURTHER ORDERED** that the Rule 30(b)(6) deposition of Zilog, Inc. shall commence in Boise, Idaho starting at 9.00 a.m. (MST) on February 12, 2014 and that Zilog, Inc., shall produce at least three (3) corporate designees to testify on its behalf on that date.

**IT IS FURTHER ORDERED** that Zilog, Inc.'s request, made orally at hearing, that American Semiconductor, Inc., be required to bear the travel and hotel expenses incurred by or on behalf of Zilog, Inc.'s witnesses to appear and testify at the Rule 30(b)(6) deposition of Zilog, Inc., is **DENIED** without prejudice.

**FINALLY, IT IS ORDERED** that a status conference shall be held on Thursday, March 6, 2014 at 3.30 p.m.

This Order hereby incorporates by reference the Court's findings and reasons  
stated orally on the record during the hearing on January 10, 2014. JM

DATED this 22<sup>nd</sup> day of January, 2014.

  
The Honorable Thomas F. Neville  
District Judge

### CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_\_ day of January, 2014, I caused a true and correct copy of the foregoing **ORDER RE: PLAINTIFF'S DISCOVERY MOTIONS** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Facsimile (208) 337-4854  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

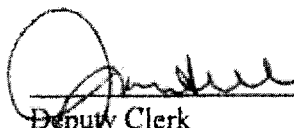
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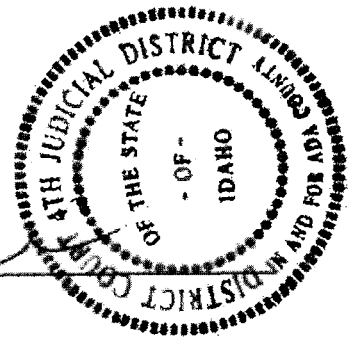
John N. Zarian  
Kennedy K. Luval  
PARSONS BEHLE & LATIMER  
960 Broadway Ave., Suite 250  
Boise, ID 83706  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Gerald T. Husch  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
Post Office Box 829  
Boise, ID 83701  
Facsimile (208) 385-5384  
*Attorneys for Defendant Zilog, Inc.*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
Deputy Clerk



## **EXHIBIT D**

Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**AMENDED NOTICE OF  
DESIGNATION OF WITNESSES RE:  
SECOND AMENDED NOTICE OF  
RULE 30(b)(6) DEPOSITION OF  
DEFENDANT ZILOG, INC.**

**AMENDED NOTICE OF DESIGNATION OF WITNESSES RE: SECOND AMENDED  
NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT ZILOG, INC. - 1** Client:3208481.1

000697



COMES NOW defendant, Zilog, Inc., by and through its attorney of record, Gerald T. Husch of the firm Moffatt, Thomas, Barrett, Rock & Fields, Chartered, and hereby designates the following persons to testify regarding the following topics set forth in Plaintiff American Semiconductor, Inc.'s Second Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc., without waiving any objections to such discovery, including but not limited to Zilog, Inc.'s objection to topics 2, 4, 5, 6, 7, 11, 14, 15, 19, 20, 21 and 23, to the extent, if any, that plaintiff intends to seek discovery contrary to the terms of the Court's Protective Order filed herein.

#### **DEPOSITION TOPICS**

1. Zilog's corporate structure, business model and operations.

RESPONSE NO. 1: Steve Darrough, Vice President Marketing.

2. Solicitation or acceptance of design or related services offered by Sage Silicon Solutions, LLC ("Sage") and/or David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany and Evelyn Perryman (the "Individuals") at any time.

RESPONSE NO. 2: David Staab, Vice President Silicon Development.

3. Relationships with Sage and the Individuals.

RESPONSE NO. 3: David Staab, Vice President Silicon Development.

4. Access by Sage and Individuals to Zilog's physical facilities and/or computing assets in connection with their provision of design and related services to Zilog.

RESPONSE NO. 4: David Staab, Vice President Silicon Development.

5. Communications with regarding [sic] Sage and Individuals' provision of design or related services to Zilog.

RESPONSE NO. 5: David Staab, Vice President Silicon Development.

6. Solicitation or acceptance of design or related services offered by ASI at any time.

RESPONSE NO. 6: David Staab, Vice President Silicon Development.

7. Solicitation or acceptance of design or related services offered by third party providers including, without limitation, the Embedded Resource Group, Inc.

RESPONSE NO. 7: David Staab, Vice President Silicon Development; Rick White, former Vice President of Operations.

8. Relationship with Rick White.

RESPONSE NO. 8: David Staab, Vice President Silicon Development.

9. Communications regarding ASI and/or its proprietary technologies, intellectual property or trade secrets including, without limitation, communications occurring or which occurred between Zilog and Lattice Semiconductor.

RESPONSE NO. 9: Rick White, former Vice President of Operations..

10. Knowledge of the Individuals' relationships, employment or otherwise, with ASI.

RESPONSE NO. 10: David Staab, Vice President Silicon Development.

11. Negotiations or discussions with Sage and/or the Individuals in connection with their provision of design and related services to Zilog.

RESPONSE NO. 11: David Staab, Vice President Silicon Development.

12. Use of ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

RESPONSE NO. 12: David Staab, Vice President Silicon Development.

13. Benefits derived from use of ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

RESPONSE NO. 13: David Staab, Vice President Silicon Development.

14. Products or services incorporating design and related services provided to Zilog by Sage and/or the Individuals.

RESPONSE NO. 14: David Staab, Vice President Silicon Development.

15. Use of non-ASI proprietary technologies, intellectual property, trade secrets or other similar intangible assets as part of products or services that incorporate design and related services provided to Zilog by Sage and/or the Individuals.

RESPONSE NO. 15: David Staab, Vice President Silicon Development.

16. Harm or damage sustained by ASI as a result of Zilog's ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

RESPONSE NO. 16: David Staab, Vice President Silicon Development.

17. Payments made to Sage and/or the Individuals for design or related services provided to Zilog.

RESPONSE NO. 17: David Staab, Vice President Silicon Development.

18. Marketing or promotion of any products or services incorporating design or related services provided to Zilog by Sage and/or the Individuals.

**RESPONSE NO. 18:** Steve Darrough, Vice President Marketing.

19. Communications with Sage and/or the Individuals regarding this litigation or the subject matter of this litigation.

**RESPONSE NO. 19:** Steve Darrough, Vice President Marketing.

20. Communications with third parties concerning this litigation or the subject matter of this litigation.

**RESPONSE NO. 20:** David Staab, Vice President Silicon Development. Zilog, Inc. objects to the extent, if any, that plaintiff is seeking disclosure of work product or privileged attorney-client communications.

21. Investigations conducted in connection with any allegations or factual assertions made by Zilog in this litigation.

**RESPONSE NO. 21:** David Staab, Vice President Silicon Development. Zilog, Inc. objects to the extent, if any, that plaintiff is seeking disclosure of work product or privileged attorney-client communications.

22. Lawsuits in which Zilog has been name or participated as a party.

**RESPONSE NO. 22:** Steve Darrough, Vice President Marketing. Zilog, Inc. objects to the extent, if any, that plaintiff is seeking disclosure of work product or privileged attorney-client communications or information protected from discovery by Idaho Rule of Civil Procedure 26(c)(7).

23. Efforts to locate, review and produce records responsive to ASI's discovery requests.

**RESPONSE NO. 23:** Dat Huynh, IT Manager.

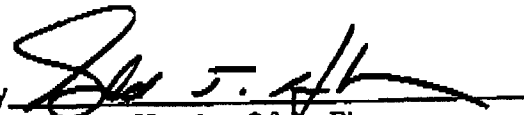
24. Record retention and storage policies or practices including, but not limited to, electronic or hard copy archiving.

RESPONSE NO. 24: Dat Huynh, IT Manager.

DATED this 10th day of February, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By



Gerald T. Husch - Of the Firm  
Attorneys for Defendant Zilog, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of February, 2014, I caused a true and correct copy of the foregoing **AMENDED NOTICE OF DESIGNATION OF WITNESSES RE: SECOND AMENDED NOTICE OF RULE 30(B)(6) DEPOSITION OF DEFENDANT ZILOG, INC.** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

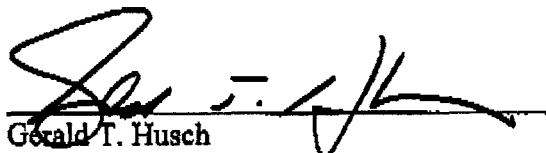
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☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Facsimile (208) 337-4854  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
800 W. Main St., Suite 1300  
Boise, ID 83702  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

  
Gerald T. Husch

## **EXHIBIT E**

## Judy Holder

---

**From:** Gerry Husch <GTH@moffatt.com>  
**Sent:** Monday, February 10, 2014 3:02 PM  
**To:** Kennedy K. Luvai; Gary Cooper  
**Cc:** Cathy Pontak; Vicky R. Glass; John N. Zarian; Carla Holbrook; barbie@cooper-larsen.com  
**Subject:** RE: ASI v. Sage - Depositions [MT-C.FID619553]

Kennedy,

My assistant will send you an amended notice of designation shortly. We will produce Steve Darrough, Zilog's VP of Marketing; Dat Hunyh, Zilog's IT Manager; and David Staab, Zilog's VP of Silicon Development.

I don't think Steve Darrough or Dat Hunyh will take long. I would suggest that you depose them first, so we can be sure that they can fly back to San Jose on Wednesday.

If possible, we would like to finish by 4:30 on Wednesday, so that David Staab and Dan Eaton can make what I understand to be the last flight of the day to San Jose, which leaves Boise at about 6 pm. If an 8:30 start would facilitate that goal, we are amenable to starting the depo then.

Gerry

GERALD T. HUSCH  
101 S. Capitol Blvd., 10th Floor (83702)  
PO Box 829  
Boise, Idaho 83701  
Direct Phone: 208.385.5406  
Direct Fax: 208.385.5406  
Email [gth@moffatt.com](mailto:gth@moffatt.com)  
web [www.moffatt.com](http://www.moffatt.com)

***Moffatt Thomas***

---

**From:** Kennedy K. Luvai [<mailto:KLuvai@parsonsbehle.com>]  
**Sent:** Monday, February 10, 2014 1:30 PM  
**To:** Gary Cooper  
**Cc:** Cathy Pontak; Vicky R. Glass; John N. Zarian; Gerry Husch; Carla Holbrook; [barbie@cooper-larsen.com](mailto:barbie@cooper-larsen.com)  
**Subject:** RE: ASI v. Sage - Depositions

Gary, noted and thanks.

I also intended to state Feb. 11 and Feb. 12, in case anyone is wondering....

**From:** Gary Cooper [<mailto:gary@cooper-larsen.com>]  
**Sent:** Monday, February 10, 2014 1:23 PM  
**To:** Kennedy K. Luvai  
**Cc:** Cathy Pontak; Vicky R. Glass; John N. Zarian; [gth@moffatt.com](mailto:gth@moffatt.com); Carla Holbrook ([CIH@moffatt.com](mailto:CIH@moffatt.com)); [barbie@cooper-larsen.com](mailto:barbie@cooper-larsen.com)  
**Subject:** Re: ASI v. Sage - Depositions

My three will be there. You choose.

On Feb 10, 2014 1:15 PM, "Kennedy K. Luvai" <[KLuvai@parsonsbehle.com](mailto:KLuvai@parsonsbehle.com)> wrote:



Gerry & Gary,

I tried calling you both but was advised you were each unavailable. To follow-up with regard to the Sage and Zilog Rule 30(b)(6) depositions set to commence on February 12 and February 13, respectively, could you please advise what in order your clients intend to produce the corporate designees?

Best Regards,

Kennedy



---

**Kennedy K. Luvai | Attorney at Law | Registered Patent Attorney**

800 W. Main Street, Suite 1300 | Boise, Idaho 83702

Main 208.562.4900 | Direct 208.562.4892 | Cell 208.863.0508

[parsonsbehle.com](http://parsonsbehle.com) | vCard

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## **EXHIBIT F**

John N. Zarian, ISB #7390  
Kennedy K. Luvai, ISB#8824  
PARSONS BEHLE & LATIMER  
800 W Main Street, Suite 1300  
Boise, Idaho 83702  
Telephone: 208.562.4900  
Facsimile: 208.562.4901  
jzarian@parsonsbehle.com  
kluvai@parsonsbehle.com

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 112334

*The Honorable Thomas F. Neville*

**THIRD AMENDED NOTICE OF  
RULE 30(b)(6) DEPOSITION OF  
DEFENDANT ZILOG, INC.**

**THIRD AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC.**

4822-3962-7800.1

000708

**PLEASE TAKE NOTICE** that, pursuant to Idaho Rule of Civil Procedure 30(b)(6) ("Rule 30(b)(6)"), and pursuant to the stipulation of the parties, plaintiff, American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, shall resume taking the deposition upon oral examination of defendant Zilog, Inc. ("Zilog"), through one or more of its officers, directors, managing agents, employees, or other persons designated to testify on its behalf, with respect to any remaining witnesses, topics and issues set forth in the Second Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc.

This deposition shall continue under oath and before a duly authorized notary public, or other person authorized by law to administer oaths. The deposition shall be recorded by (a) stenographic means by a court reporter, and (b) audio and visual means by a videographer. The deposition shall resume at **9:00 a.m. on Tuesday, March 4, 2014** at the offices of **Parsons, Behle & Latimer** located at **800 W Main Street, Suite 1300, Boise, Idaho 83702**, and shall continue from day to day thereafter until concluded.

Zilog is requested to produce the witness or witnesses at the indicated time and place, and all parties and counsel of record are invited to attend and ask questions.

DATED THIS 21st day of February, 2014.

PARSONS BEHLE & LATIMER

By Kay Luwai  
Kennedy K. Luvai  
Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

**THIRD AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC. - 2**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of February, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

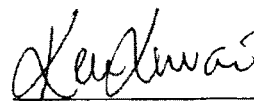
☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
Email: gary@cooper-larsen.com  
barbie@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
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Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829  
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*Attorneys for Defendant Zilog, Inc.*

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☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
Email: srt@moffatt.com  
gth@moffatt.com



Kennedy K. Luvai

## **EXHIBIT G**

Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
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Boise, Idaho 83701  
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gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DEFENDANT ZILOG, INC.'S FIFTH  
SUPPLEMENTAL RESPONSES TO  
PLAINTIFF'S FIRST SET OF  
REQUESTS FOR PRODUCTION**



**DEFENDANT ZILOG, INC.'S FIFTH SUPPLEMENTAL RESPONSES TO  
PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION - 1**

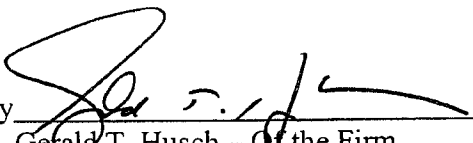
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**ORIGINAL**  
000712

COMES NOW Defendant Zilog, Inc., by and through undersigned counsel of record, and hereby supplements its previous responses to Plaintiff's First Set of Requests for Production as follows:

Without waiving its prior objections, Zilog produces herewith documents and things bates numbered as Z011615 through Z033887. Document bates numbered Z0032407 is a corrupted file that we cannot open. Included in this production is a copy of a document we believe to be the current version of the corrupted file, bates numbered Z0032408-Z0032738.

DATED this 3rd day of March, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of March, 2014, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG, INC.'S FIFTH SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

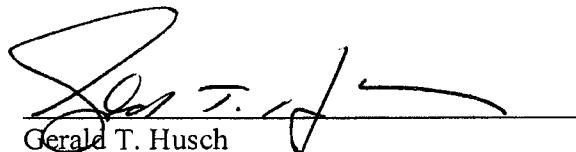
☒ U.S. Mail, Postage Prepaid  
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☐ Overnight Mail  
☐ Facsimile  
☐ E-mail

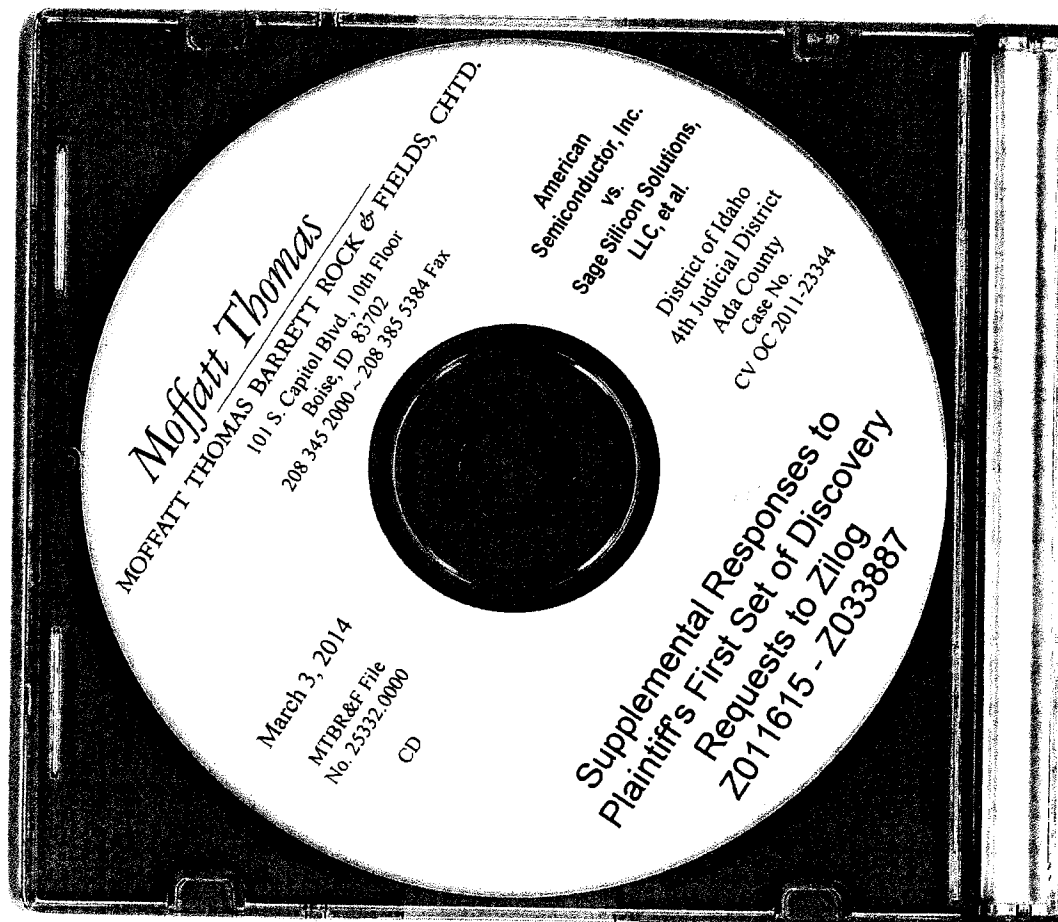
Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Facsimile (208) 337-4854  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☐ E-mail

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
800 W. Main St., Suite 1300  
Boise, ID 83702  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☐ E-mail

  
Gerald T. Husch



*Moffatt Thomas*

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.  
101 S. Capitol Blvd., 10th Floor  
Boise, ID 83702  
208 345 2000 - 208 385 5384 Fax

March 3, 2014  
MTBR&F File  
No. 25332.0000  
CD

American  
Semiconductor, Inc.  
vs.  
Sage Silicon Solutions,  
LLC, et al.

District of Idaho  
4th Judicial District  
Ada County  
Case No.  
CV OC 2011-23344

Supplemental Responses to  
Plaintiff's First Set of Discovery  
Requests to Zilog  
2011615 - 2033887

## **EXHIBIT H**

**PARSONS  
BEHLE &  
LATIMER**

800 West Main Street, Suite 1300  
Boise, Idaho 83702  
Main 208.562.4900

A Professional  
Law Corporation

Kennedy K. Luval  
Registered Patent Attorney  
Direct 208.562.4892  
KLuvai@parsonsbehle.com

March 14, 2014

**VIA FAX & EMAIL**

Gary L. Cooper  
Cooper & Larsen Chartered  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229

Gerald T. Husch  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

Russell G. Metcalf  
Metcalf Law Office, PLLC  
P.O. Box 385  
Homedale, ID 83628

**Re: *American Semiconductor v. Zilog***

Counsel:

We write as a follow-up to our continuing discussions regarding Rick White's availability to be deposed as a corporate designee in connection with the suspended Rule 30(b)(6) deposition of Zilog, Inc. During the status hearing last week, we understood Gerry to indicate that Mr. White was available on Thursday, March 20 and Friday, March 21. Unfortunately, those dates do no work for us.

However, we are available on Monday, March 31, Tuesday April 1 or Friday, April 4 to resume the Rule 30(b)(6) deposition (in Boise, as previously ordered by the Court). We expect that the examination of Mr. White will take a half day and, therefore, we could start his examination at either 9.00 a.m. or 1.00 p.m. on the aforementioned dates. Please advise, at your earliest, whether these dates and times are acceptable.

Sincerely,

PARSONS BEHLE & LATIMER



Kennedy K. Luval

## **EXHIBIT I**

*Moffatt Thomas*

MOFFATT THOMAS BARRETT ROCK &amp; FIELDS, CHTD.

Boise  
Idaho Falls  
PocatelloRichard C. Fields  
John S. Simko  
John C. Ward  
David B. Lincoln  
Gary T. Dance  
Larry C. Hunter  
Randall A. Peterman  
Mark S. Prusynski  
Stephen R. Thomas  
Gerald T. Husch  
Scott L. Campbell  
Patricia M. Olsson  
Christine E. Nicholas  
Bradley J. Williams  
Lee RadfordMichael O. Roe  
David S. Jensen  
James L. Martin  
C. Clayton Gill  
Michael W. McGresham  
David P. Gardner  
Julian E. Gabiola  
Kimberly D. Evans Ross  
Jon A. Srenquist  
Mark C. Peterson  
Tyler J. Anderson  
Andrew J. Walders  
C. Edward Cather III  
Benjamin C. Ritchie  
Matthew J. McGeeMindy M. Willman  
Jetta Hatch Mathews  
Andrea J. Rosholt  
Maria O. Hart  
Kirk J. HoustonNorman M. Semanko, *of counsel*  
Terri L. Ackerman, *of counsel**Willis C. Moffatt, 1907-1980*  
*Eugene C. Thomas, 1931-2010*  
*John W. Barrett, 1931-2011*  
*Kirk R. Helvie, 1956-2003*March 18, 2014  
*via Facsimile*Mailing Address  
PO Box 829  
Boise ID 83701-0829Physical Address  
US Bank Plaza  
101 S Capitol Blvd 10th Fl  
Boise ID 83702-7710208 345 2000  
800 422 2889  
208 385 5384Fax  
www.moffatt.comKennedy K. Luvai  
Parsons Behle & Latimer, PLC  
800 W. Main St., Suite 1300  
Boise, ID 83702**Re: ASI v. Zilog**  
MTBR&F File No. 25332.0000

Dear Kennedy:

This letter is in response to your correspondence dated March 14, 2014, regarding the deposition of Zilog's designee, Rick White, pursuant to Idaho Rule of Civil Procedure 30(b)(6).

I understand that none of the three dates that Mr. White offered for his deposition in Portland—March 14, 20 and 21—are available to you and that you are seeking to depose Mr. White in Boise on March 31, April 1 or April 4.

Contrary to your contention, the Court did not order Zilog to produce Mr. White for a deposition in Boise. This is not a matter of costs. At its own expense, Zilog produced three (3) separate witnesses—Steve Darrough, Lloyd Dat Huynh and David Staab—for depositions in Boise on February 12. The Court did not order Zilog to do anything more. However, when ASI did not finish Mr. Staab's deposition on February 12, Zilog voluntarily brought Mr. Staab back to Boise for a second deposition on March 4, at Zilog's own expense.

As I advised you and the Court at the status conference on March 6, 2014, Mr. White is no longer employed by Zilog and he will need to be deposed in the Portland area, where he now lives and works. Since Mr. White is no longer employed by Zilog and he is beyond the subpoena power of the Court, Zilog has no power to require Mr. White to attend a deposition in Boise.

Mr. White is too busy to travel to Boise for a deposition on any of the dates you have suggested. However, he does have family in the Boise area, and he might be willing to combine a deposition in Boise with a visit to see his family at a future date. If you are willing to consider that option, we will further explore it with Mr. White. However, if you continue to insist that

Kennedy K. Luvai

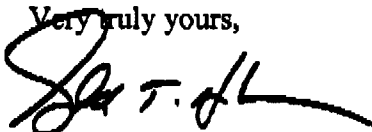
March 18, 2014

Page 2

Zilog produce Mr. White for a deposition in Boise on a date that is not acceptable to him, you will not leave us with any choice other than to file a motion for protective order.

Please advise me how you would like to proceed.

Very truly yours,

A handwritten signature in black ink, appearing to read "G.T. Husch", with a stylized flourish at the end.

Gerald T. Husch

GTH/cih

## **EXHIBIT J**



**PARSONS  
BEHLE &  
LATIMER**

800 West Main Street, Suite 1300  
Boise, Idaho 83702  
Main 208.562.4900

A Professional  
Law Corporation

Kennedy K. Luval  
Registered Patent Attorney  
Direct 208.562.4892  
KLuval@parsonsbehle.com

March 19, 2014

VIA FAX & U.S. MAIL

Gerald T. Husch  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

Re: American Semiconductor v. Zilog

Dear Gerry:

We are in receipt of your letter from yesterday, March 18, 2014, as directed to my attention, regarding the presently recessed Rule 30(b)(6) deposition of Zilog, Inc. ("Zilog"). Thank you.

Your letter is perplexing to us on a variety of levels. As a consequence, we will endeavor to address the main issues as we perceive them. As you may appreciate from this response, we believe that Zilog's position regarding the resumption of its recessed Rule 30(b)(6) deposition to be without merit and we thus invite Zilog to reconsider its position in order to avoid burdening the Court with unnecessary motion practice.

*First*, we are befuddled by Zilog's oblique suggestion that Mr. White is a third party witness to this action and, therefore, American Semiconductor, Inc. ("ASI"), as the plaintiff, is obligated to travel to Portland in order to examine him. Surely, that is not Zilog's position. If it is, please confirm – it would be helpful if you could articulate Zilog's grounds for so contending. In contrast and as you know, Mr. White was (and still is) designated as a Zilog corporate witness to be produced to testify on its behalf as to matters set forth in Second Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc. (the "Deposition Notice").

We see the representation in your letter that Mr. White "is no longer employed by Zilog." Consequently, under Zilog's designation of witnesses, Mr. White appears to fall into the category of "other persons *who consent* to testify on its behalf" under Rule 30(b)(6) (emphasis added). Having been thus designated as a Zilog corporate witness, Mr. White is *not* a third party witness. Mr. White is as much a party witness whose testimony will be binding upon Zilog as are Mr. Staab, Mr. Darraugh and Mr. Huynh. Mr. White's status as a former employee is immaterial for purposes of Rule 30(b)(6).

Gerald T. Husch  
March 19, 2014  
Page Two

Accordingly, Zilog's contentions that Mr. White "is beyond the subpoena power of the Court" and that "Zilog has no power to require Mr. White to attend a deposition in Boise" make no sense whatsoever to us. Zilog is a party to this action and, thus, ASI is not required to subpoena any of Zilog's *self-designated* corporate designees in order for them to appear to be examined in Boise on designated matters. Besides, having *consented* to testify on Zilog's behalf in this action, Mr. White necessarily submitted himself to the jurisdiction of this Court as a Zilog designee. To the extent that Zilog induced Mr. White to agree to testify on its behalf based on (misguided) assurances regarding the location of the deposition, such is a matter between Zilog and Mr. White.

*Second*, to the extent, as Zilog contends, that Mr. White is "too busy to travel to Boise for a deposition" or that "Zilog has no power to require Mr. White to attend a deposition in Boise," the onus is on Zilog to immediately designate and prepare a new witness to testify as to the matters Mr. White was expected to testify to. *See Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989) (if it appears that the designated witness is unable to answer questions on matters specified in the deposition notice, the corporate entity must immediately designate a new witness). Of course, if Zilog no longer employs anyone knowledgeable about the designated matter, it must prepare a representative to testify. *See e.g. Sprint Communications Co., L.P. v. Theglobe.com, Inc.*, 236 F.R.D. 524, 527-28 (D.Kan. 2006). In sum, Zilog cannot avoid its obligation to testify as to matters properly set forth in the Deposition Notice by designating witnesses who are unwilling, unable and/or unavailable to testify. Zilog must either produce Mr. White or *immediately* designate another representative.

*Third*, given the foregoing, Zilog's proposal that Mr. White "might be willing to combine a deposition in Boise with a visit to see his family" at some *indeterminate* "future date" makes us wonder if Zilog actually intended for ASI to treat this offer seriously. To be clear, this proposal is a non-starter for the reasons stated in this letter.

*Fourth*, whether or not the Court expressly ordered Zilog to produce Mr. White to be deposed in Boise, that directive is clearly implied both from the Court's January 22, 2014 order and the parties' course of conduct whereby the depositions of Zilog's corporate designees have all taken place in Boise. Please recall that the Court ordered that the Rule 30(b)(6) deposition of Zilog was to commence (and thus take place) in Boise.

For further discussion confirming Boise as the appropriate location for Zilog's Rule 30(b)(6) deposition, please see our letter to you from yesterday, March 18, 2014. Obviously, to the extent Mr. White appears as a corporate designee to testify on behalf of Zilog, ASI will be resuming the recessed deposition of Zilog, the corporate entity. Therefore, all the arguments set forth in our March 18, 2014 letter establishing Boise as the proper location for Zilog's Rule 30(b)(6) deposition equally apply here.

Gerald T. Husch  
March 19, 2014  
Page Three

\* \* \*

Based on the foregoing, please let us know by close of business on Friday, March 21, 2014 whether Zilog will reconsider its position and agree to produce Mr. White to be examined as a corporate Rule 30(b)(6) witness in Boise. In light of the December 2014 trial date, ASI has no interest in further wasting time on tangential issues and is prepared to file a motion to compel as soon as Monday, March 24, 2014, or at its first opportunity immediately thereafter.

Because Zilog has chosen not to meaningfully respond to our request for Mr. White's availability to be examined in Boise on March 31, 2014, April 1, 2014 or April 4, 2014, we are left with no option but to notice the resumption of the recessed Rule 30(b)(6) deposition of Zilog for April 1, 2014. (A copy of the Fourth Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc. which is being served herewith).

Of course, we are willing to meet and confer with Zilog and the Sage defendants in good faith to the extent that the April 1, 2014 is, indeed, unworkable. However, please be advised that we will re-notice the resumption of the Rule 30(b)(6) deposition only after the parties agree to a mutually agreeable date.

As with our letter from yesterday, we trust that this letter resolves this additional side issue. However, to the extent that you wish to discuss further, we are available to meet and confer this week.

In the meantime, please contact me if anything stated above requires clarification.

Sincerely,

PARSONS BEHLE & LATIMER



Kennedy K. Luvai

KKL:vrg  
Enclosure

cc: Gary L. Cooper  
Russell G. Metcalf  
Stephen R. Thomas

000724

John N. Zarian, ISB #7390  
Kennedy K. Luvai, ISB#8824  
PARSONS BEHLE & LATIMER  
800 W Main Street, Suite 1300  
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Facsimile: 208.562.4901  
jzarian@parsonsbehle.com  
kluvai@parsonsbehle.com

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

**FOURTH AMENDED NOTICE OF  
RULE 30(b)(6) DEPOSITION OF  
DEFENDANT ZILOG, INC.**

**FOURTH AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC.**

4831-3772-4697.1

000725


**PLEASE TAKE NOTICE** that, pursuant to Idaho Rule of Civil Procedure 30(b)(6) ("Rule 30(b)(6)"), and pursuant to the stipulation of the parties, plaintiff, American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, shall resume taking the recessed deposition upon oral examination of defendant Zilog, Inc. ("Zilog"), through one or more of its officers, directors, managing agents, employees, or other persons designated to testify on its behalf, with respect to any remaining witnesses, topics and issues set forth in the Second Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc.

This deposition shall continue under oath and before a duly authorized notary public, or other person authorized by law to administer oaths. The deposition shall be recorded by (a) stenographic means by a court reporter, and (b) audio and visual means by a videographer. The deposition shall resume at **1.00 p.m. on Tuesday, April 1, 2014** at the offices of **Parsons, Behle & Latimer** located at **800 W Main Street, Suite 1300, Boise, Idaho 83702**, and shall continue from day to day thereafter until concluded.

Zilog is requested to produce the witness(es) at the indicated time and place, and all parties and counsel of record are invited to attend and ask questions.

DATED THIS 19th day of March, 2014.

PARSONS BEHLE & LATIMER

By   
Kennedy K. Luvai  
Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

**FOURTH AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC. - 2**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of March, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182

*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: gary@cooper-larsen.com barbie@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
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Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854

*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: rmetcalf@cableone.net

Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
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*Attorneys for Defendant Zilog, Inc.*

<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: srt@moffatt.com gth@moffatt.com

  
\_\_\_\_\_  
Kennedy K. Luvai

## **EXHIBIT K**

**PARSONS  
BEHLE &  
LATIMER**

800 West Main Street, Suite 1300  
Boise, Idaho 83702  
Main 208.562.4900

A Professional  
Law Corporation

Kennedy K. Luval  
Registered Patent Attorney  
Direct 208.562.4882  
KLuvai@parsonsbhle.com

March 18, 2014

**VIA FAX**

Gerald T. Husch  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

**Re:   *American Semiconductor v. Zilog***

Dear Gerry:

We write in further response to your February 10, 2014 letter in which your client, Zilog, Inc. ("Zilog"), requests that American Semiconductor, Inc. ("ASI") agree to pay expenses associated with Zilog's production of its Rule 30(b)(6) designees to be examined as a party to this action.

We have reviewed the authorities you rely upon in your letter. As further discussed below, because those authorities are inapposite, ASI respectfully declines to assume costs and expenses properly borne by Zilog.

As an initial matter, we choose not to quibble with fact that *some* federal courts have recognized a generalized "presumption" that the deposition of a corporation by its agents or representatives should ordinarily take place at its principal place of business. However, we are not aware of any Idaho court expressly adopting such a presumption, nor does Zilog so argue. In any event, the inquiry clearly does not end there as Zilog appears to suggest, conveniently ignoring the fact that courts do have broad *discretion* to require corporate defendants to produce officers or agents for depositions at locations other than the corporation's principal place of business where, as here, there is no showing that the corporate defendant will suffer financial hardship. See e.g. *Aerocrine AB v. Apieron Inc.*, 267 F.R.D. 105, 108 (D.Del. 2010); *South Seas Catamaran, Inc. v. Motor Vessel Leeway*, 120 F.R.D. 14, 21 n. 5 (D.N.J. 1988).

Any "presumption" that a corporate defendant be deposed at or near its principal place of business may be (easily) overcome by an analysis of appropriate factors, including: (a) the location of counsel for all parties in the forum; (b) the number of corporate representatives a party is seeking to depose; (c) the likelihood of significant discovery disputes arising that would



Gerald T. Husch  
March 18, 2014  
Page Two

necessitate resolution by the forum court; (d) whether the persons sought to be deposed often engage in travel for business purposes; and (e) the equities with regard to the nature of the claim and the parties' relationship. See *E.I. DuPont de Nemours & Co. v. Kolon Industries, Inc.*, 268 F.R.D. 45, 54 (E.D.Va. 2010); *Armsey v. Medshares Mgmt. Servs., Inc.*, 184 F.R.D. 569, 571 (W.D.Va. 1998); *Nat'l Cmty. Reinvestment Coal. v. NovaStar Fin., Inc.*, 604 F.Supp.2d 26, 31 (D.D.C. 2009).

As to an application of the foregoing factors, please recall that ASI briefed this issue as part of its reply in further support of its motion to compel Rule 30(b)(6) depositions of Sage Silicon Solutions, LLC and Zilog, filed January 7, 2014. Moreover, the Court took up this issue in open court on January 10, 2014, and effectively found that the clear weight of these factors as supporting its exercise of discretion in requiring Zilog to produce its corporate designees to be deposed in Boise. In spite of ASI's briefing and the Court's consideration of these factors, Zilog avoids this issue altogether. We are therefore left to conclude that Zilog does not genuinely contend that the foregoing factors serve to preclude the Court's exercise of discretion in finding Boise to be the appropriate location.

To the extent Zilog now contends otherwise, please let us know. We will be happy to consider any such arguments along with supporting authority and documentation, if any. If Zilog does so, it may be beneficial, as part of this meet and confer, for it to address the following discrete matters: (a) which attorneys of record in this case are located in California; (b) who between Zilog and ASI designated the corporate witnesses; (c) Zilog's apparent preference that a California court (with no history or experience in this action) be called upon to resolve any discovery disputes that may arise; (d) whether the corporate designees engage in business travel; (e) the nature and extent of financial hardship to Zilog in producing its corporate designees to be deposed in Idaho (relative to an objective measure, such as value of corporate assets); and (f) Zilog's position as to any other equitable and related factors set forth in ASI's reply briefing (which we do not believe that Zilog has responded to in writing).

Additionally, neither *Connell v. Biltmore Security Life Ins. Co.*, 41 F.R.D. 136 (D.S.C. 1996) nor *Nat'l Cmty. Reinvestment Coal*, *supra*, support Zilog's contention that it is entitled to be reimbursed for costs associated with producing its *self-designated* corporate witnesses to testify on its behalf in this action. Both cases involve situations where the plaintiff, in each instance, sought to take the deposition of the *president* of the defendant corporation. Of course, ASI did not seek to depose the highest ranking corporate officer of Zilog neither did ASI designate which witness Zilog was to produce. Accordingly, these cases are unavailing and do not apply to a situation, as here, where Zilog made its own independent decision as to who to produce based on a properly served deposition notice.

For the reasons set forth above, we believe that Zilog's position regarding (a) the location of its Rule 30(b)(6) deposition and (b) costs associated with its appearance at the deposition to be without merit.

Gerald T. Husch  
March 18, 2014  
Page Three

We trust that this letter resolves this tangential issue. However, to the extent that you wish to discuss further, we are available to meet and confer at a mutually convenient time.

In the meantime, please contact me if anything stated above requires clarification.

Sincerely,

PARSONS BEHLE & LATIMER

A handwritten signature in dark ink, appearing to read 'Kennedy K. Luvai', written in a cursive style.

Kennedy K. Luvai

KKL:vrg

cc: Stephen R. Thomas  
Gary L. Cooper  
Russell G. Metcalf

## **EXHIBIT L**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an	)	
Idaho corporation,	)	Case No. CV OC 1123344
Plaintiff,	)	
vs.	)	VIDEOTAPED RULE 30(b)(6)
SAGE SILICON SOLUTIONS, LLC, an	)	DEPOSITION OF ZILOG, INC.
Idaho corporation; ZILOG, INC.,	)	TESTIMONY OF DAVID R. STAAB
a Delaware corporation; DAVID	)	TAKEN MARCH 4, 2014
ROBERTS, GYLE YEARSLEY, WILLIAM	)	
TIFFANY, and Defendants DOES	)	
I-X,	)	
Defendants.	)	VOLUME IV
_____	)	(Pages 190 through 401)
RELATED COUNTER ACTIONS	)	
_____	)	

REPORTED BY:

SHERI FOOTE, CSR No. 90, RPR, CRR

Notary Public

09:28:52 1 **Q. What's the distinction?**  
 09:28:53 2 A. Designs are performed by a designer. Layout  
 09:28:59 3 is performed by a person who implements layout.  
 09:29:04 4 **Q. Is this the only purchase order that was**  
 09:29:07 5 **issued to this vendor on this project?**  
 09:29:09 6 A. No.  
 09:29:10 7 **Q. Is there another purchase order somewhere?**  
 09:29:12 8 A. Yes.  
 09:29:13 9 **Q. Has that been produced?**  
 09:29:16 10 A. I believe so.  
 09:29:19 11 MR. ZARIAN: All right. I don't think we've  
 09:29:21 12 seen it, Gerry. We appreciate this one being produced,  
 09:29:25 13 but I don't think I've seen another.  
 09:29:27 14 MR. HUSCH: I think we've produced two now.  
 09:29:29 15 You asked about the first one at the first part of his  
 09:29:32 16 deposition and asked me to produce the second one, which  
 09:29:36 17 I did.  
 09:29:37 18 MR. ZARIAN: All right. That was the second  
 09:29:37 19 one that we were looking at before?  
 09:29:37 20 MR. HUSCH: The second one to be produced —  
 09:29:37 21 MR. ZARIAN: Yeah, okay.  
 09:29:38 22 MR. HUSCH: — since this one.  
 09:29:40 23 **Q. (BY MR. ZARIAN) To your understanding, did**  
 09:29:42 24 **you provide any documents included on the CD that**  
 09:29:46 25 **appears at the end of Exhibit No. 109?**

09:30:12 1 A. I believe so. It's March 3rd.  
 09:30:23 2 **Q. Since you last gave testimony in this matter**  
 09:30:28 3 **did you personally search for any documents that you**  
 09:30:31 4 **understood to be produced in this case?**  
 09:30:32 5 A. Yes, I did.  
 09:30:33 6 **Q. What did you search for?**  
 09:30:35 7 A. I searched for really all project documents,  
 09:30:40 8 including attachments that were removed from e-mails  
 09:30:46 9 that were provided previously.  
 09:30:48 10 **Q. Anything else?**  
 09:30:51 11 A. No.  
 09:30:51 12 **Q. How do you know those attachments were removed**  
 09:30:54 13 **from previously provided e-mails?**  
 09:30:57 14 A. It's a modus operandi for me so that my  
 09:31:04 15 mailbox doesn't overflow.  
 09:31:06 16 **Q. And how and where did you find the attachments**  
 09:31:11 17 **this time around?**  
 09:31:11 18 A. Well, normally I store off large attachments  
 09:31:12 19 into a directory that's appropriate for those files.  
 09:31:16 20 And so, those were located in the project directory that  
 09:31:19 21 I had and I provided the entire project directory.  
 09:31:22 22 **Q. Had you searched that directory before?**  
 09:31:26 23 A. Before what?  
 09:31:26 24 **Q. Before you last searched it since the last**  
 09:31:29 25 **time you gave testimony.**

09:31:31 1 MR. HUSCH: Object to the form of the  
 09:31:32 2 question.  
 09:31:33 3 THE WITNESS: Could you repeat the question.  
 09:31:34 4 I didn't understand it.  
 09:31:35 5 **Q. (BY MR. ZARIAN) Sure. You said you searched**  
 09:31:37 6 **for documents since the last time you gave testimony; is**  
 09:31:37 7 **that correct?**  
 09:31:40 8 A. That's correct.  
 09:31:40 9 **Q. And as part of that search you located and**  
 09:31:43 10 **produced this directory; is that correct?**  
 09:31:45 11 A. I was asked about why attachments were missing  
 09:31:50 12 from the e-mails and I had indicated that they were in  
 09:31:52 13 this directory. So, I provided all of the contents of  
 09:31:55 14 the directory.  
 09:31:56 15 **Q. And you did that since the last session of**  
 09:31:58 16 **your deposition?**  
 09:31:59 17 A. That's correct.  
 09:32:00 18 **Q. Prior to searching for and providing that**  
 09:32:04 19 **directory with attachments since the last session of**  
 09:32:08 20 **your deposition, had you done that before?**  
 09:32:11 21 A. I'm sorry, I don't understand the question.  
 09:32:12 22 Could you rephrase it?  
 09:32:14 23 **Q. Had you looked at that directory before to**  
 09:32:17 24 **produce documents in this case?**  
 09:32:21 25 A. No.

09:32:22 1 **Q. Why didn't you do it before?**  
 09:32:25 2 A. It wasn't clear to me that that was needed. I  
 09:32:29 3 blew it.  
 09:32:33 4 **Q. And so, you believe you have now produced the**  
 09:32:36 5 **attachments to documents previously produced in this**  
 09:32:43 6 **litigation, which attachments had been removed pursuant**  
 09:32:53 7 **to your regular business practice from the previously**  
 09:32:55 8 **produced versions of those documents; is that correct?**  
 09:32:55 9 A. I'm sorry, the question was too long. I  
 09:32:57 10 couldn't follow it. Could you shorten it or rephrase  
 09:32:57 11 it?  
 09:32:57 12 **Q. You have now produced the attachments that**  
 09:33:01 13 **were previously removed?**  
 09:33:02 14 A. I have produced all existing attachments.  
 09:33:07 15 **Q. That were previously removed?**  
 09:33:08 16 A. I believe so, yes. All that exist. There may  
 09:33:11 17 be cases where some no longer exist. During the course  
 09:33:15 18 of the project they were disposable.  
 09:33:17 19 **Q. Did you find the development timeline for this**  
 09:33:21 20 **6482 project?**  
 09:33:22 21 A. Yes.  
 09:33:23 22 **Q. Where is that?**  
 09:33:26 23 A. It should be under a directory called  
 09:33:28 24 "Schedules." There will be a number of versions of it.  
 09:33:33 25 **Q. On this CD with the 22,000 pages of documents**

13:53:45 1 A. No, it was not.  
 13:53:47 2 **Q. Was that work done remotely through VPN as you**  
 13:53:51 3 **understood it?**  
 13:53:54 4 A. Yes, it was.  
 13:54:00 5 **Q. What is a "sandbox"?**  
 13:54:04 6 A. A temporary version of the design.  
 13:54:17 7 **Q. What is a "stub view"?**  
 13:54:24 8 A. A "stub view" is the outer shell  
 13:54:31 9 representation of the design without its inner  
 13:54:34 10 functionality.  
 13:54:37 11 **Q. I'll direct your attention to Exhibit No. 94.**  
 13:54:41 12 A. (Reviewing document.)  
 13:54:51 13 **Q. There's a reference about three fourths of the**  
 13:54:59 14 **way down the first page to "David." Do you understand**  
 13:55:01 15 **that to be a reference to you?**  
 13:55:10 16 A. Yes.  
 13:55:12 17 **Q. At the very bottom of this page there's a**  
 13:55:14 18 **quote that begins with: "The software can be used by**  
 13:55:20 19 **contractors/consultants." Do you see that?**  
 13:55:23 20 A. Yes.  
 13:55:24 21 **Q. And it goes on to say: "But it can only be**  
 13:55:27 22 **used on computers within the listed Zilog sites**  
 13:55:33 23 **(Milpitas)." Do you see that statement?**  
 13:55:37 24 A. Yes.  
 13:55:38 25 **Q. Again, did Bill Tiffany do any of the**

13:57:43 1 licensing agreement included a reference to Sage, but I  
 13:57:48 2 need to double check.  
 13:57:49 3 **Q. (BY MR. ZARIAN) Well, let's be clear. As of**  
 13:57:51 4 **May 2, 2011, you did not have a final license agreement**  
 13:57:54 5 **with CAST; correct?**  
 13:57:55 6 A. Correct.  
 13:57:56 7 **Q. But you were still working under the**  
 13:57:58 8 **evaluation license agreement; correct?**  
 13:58:00 9 A. Yes.  
 13:58:00 10 **Q. And it was under that agreement that**  
 13:58:02 11 **Mr. Tiffany conducted his evaluation; correct?**  
 13:58:05 12 A. Correct.  
 13:58:05 13 **Q. And now, the evaluation license agreement was**  
 13:58:08 14 **negotiated by you; true?**  
 13:58:09 15 A. Yes.  
 13:58:10 16 **Q. And Exhibit No. 90 shows only one authorized**  
 13:58:15 17 **site at Schedule 3, that is the Milpitas, California,**  
 13:58:19 18 **business address of Zilog; correct?**  
 13:58:22 19 A. Yes.  
 13:58:23 20 **Q. Did you ever tell Meredith Luckewicz or anyone**  
 13:58:32 21 **else at CAST in connection with the negotiation of this**  
 13:58:36 22 **evaluation license agreement that you intended to have**  
 13:58:41 23 **engineers log in through VPN from various points in the**  
 13:58:44 24 **world to use this evaluation license?**  
 13:58:48 25 MR. HUSCH: Object to the form.

13:55:41 1 **evaluation on the CAST product from the Milpitas Zilog**  
 13:55:52 2 **site?**  
 13:55:52 3 MR. HUSCH: Object to the form.  
 13:55:53 4 THE WITNESS: So, Bill Tiffany would VPN to  
 13:55:58 5 the Milpitas site to perform his work.  
 13:56:04 6 **Q. (BY MR. ZARIAN) Well, did you ever discuss**  
 13:56:08 7 **this subject with Theo that you recall?**  
 13:56:14 8 MR. HUSCH: Objection.  
 13:56:15 9 THE WITNESS: Can you be more specific,  
 13:56:16 10 exactly what subject?  
 13:56:16 11 **Q. (BY MR. ZARIAN) The subject of having to use**  
 13:56:19 12 **computers at the Milpitas location.**  
 13:56:22 13 A. Theo and I discussed that Bill would VPN to  
 13:56:27 14 computers at the Milpitas location, yes.  
 13:56:29 15 **Q. Did you ever discuss that with CAST?**  
 13:56:38 16 A. The permanent license agreement -- hmm, let me  
 13:56:56 17 review for a second. (Reviewing document.) I believe  
 13:57:14 18 the final license agreement from CAST included --  
 13:57:31 19 identified Sage, I believe. I would need to go back and  
 13:57:34 20 review that agreement.  
 13:57:35 21 **Q. Well, you're under oath here. Do you remember**  
 13:57:37 22 **that one way or the other, sir?**  
 13:57:39 23 A. As I said, I --  
 13:57:41 24 MR. HUSCH: Asked and answered.  
 13:57:41 25 THE WITNESS: I believe that the final

13:58:49 1 THE WITNESS: I would need to look at exactly  
 13:58:54 2 our communication with her. We did install the software  
 13:59:00 3 per the authorized site in the agreement.  
 13:59:04 4 **Q. (BY MR. ZARIAN) My question is: Did you ever**  
 13:59:06 5 **tell her or anyone else at CAST that you intended to**  
 13:59:10 6 **have people log in from different points in the world to**  
 13:59:15 7 **access this software that was authorized to be used only**  
 13:59:18 8 **in Milpitas?**  
 13:59:19 9 MR. HUSCH: Object to the form.  
 13:59:19 10 THE WITNESS: So, again, I don't recall if we  
 13:59:23 11 talked about VPN with the CAST representative.  
 13:59:28 12 **Q. (BY MR. ZARIAN) So, to my question, "Do you**  
 13:59:30 13 **remember telling her that?" your answer is "No"?**  
 13:59:34 14 A. I don't recall, no.  
 13:59:34 15 **Q. Now, Mr. Theo Verhoeven here says in reference**  
 13:59:41 16 **to the evaluation software that, quote: "It can only be**  
 13:59:47 17 **used on computers within the listed Zilog sites**  
 13:59:51 18 **(Milpitas)"; correct?**  
 13:59:55 19 A. I'm sorry, which exhibit number was that  
 13:59:58 20 again?  
 13:59:58 21 **Q. That's 94.**  
 14:00:00 22 A. 94? (Reviewing document.) Yes.  
 14:00:08 23 **Q. And in your opinion, was that a correct or an**  
 14:00:11 24 **incorrect assessment of the conditions imposed by the**  
 14:00:15 25 **evaluation license?**

15:22:52 1 development as of March 10, 2011?

15:22:58 2 A. The design spec was. The system architecture

15:23:03 3 spec, I'm not sure.

15:23:05 4 Q. Did the Sage engineers work on the design

15:23:08 5 spec?

15:23:21 6 A. They did not work on that document, no.

15:23:25 7 Q. Who worked on that document?

15:23:27 8 A. I did.

15:23:28 9 Q. Anyone else?

15:23:30 10 A. No.

15:23:32 11 Q. And what was the function or purpose of that

15:23:34 12 document as you understood it?

15:23:37 13 A. The design specification lists the functional

15:23:41 14 and parametric features of the product.

15:23:45 15 Q. Was that found in the directory that you

15:23:49 16 referenced early in your testimony that you kept on this

15:23:53 17 project?

15:23:57 18 A. In the design -- on the project directory?

15:24:01 19 Q. Yes.

15:24:02 20 A. Yes.

15:24:02 21 Q. Did you turn that over for production?

15:24:06 22 A. Yes.

15:24:08 23 Q. What is the answer to Mr. Tiffany's question

15:24:10 24 here, namely as of March 10, 2011, was there a directory

15:24:16 25 in San Jose where they could keep documentation related

15:24:20 1 to the product?

15:24:31 2 A. At that time I don't know if there was a

15:24:33 3 directory or not.

15:24:36 4 Q. Was one created?

15:24:38 5 A. A directory was created.

15:24:40 6 Q. And is that the same project directory that

15:24:43 7 you referenced having reviewed since the last deposition

15:24:48 8 that you gave?

15:24:49 9 A. No.

15:24:54 10 Q. What is the directory that was created?

15:24:57 11 A. The directory that was created was a shared

15:25:04 12 directory where a limited number of files were located

15:25:07 13 for sharing.

15:25:07 14 Q. Who maintained that directory, if anyone?

15:25:10 15 A. I did.

15:25:11 16 Q. What was the name of that shared directory?

15:25:16 17 A. I believe the directory's name was the product

15:25:19 18 name, Z86482.

15:25:24 19 Q. Was that a subset of the project directory

15:25:28 20 that you referenced?

15:25:29 21 A. No, it was a separate directory.

15:25:32 22 Q. Did you also maintain the project directory?

15:25:36 23 A. The project directory that I referred to was

15:25:39 24 the project directory in my own file repository.

15:25:50 25 Q. Is the project directory in your own file

15:25:53 1 maintained on the hard drive of a desktop or similar

15:26:00 2 device?

15:26:01 3 A. It's maintained on a company server.

15:26:03 4 Q. All right. In a folder that's personal to

15:26:08 5 you?

15:26:09 6 A. Yes.

15:26:10 7 Q. And the shared directory, was that kept in a

15:26:14 8 separate folder?

15:26:15 9 A. Yes.

15:26:17 10 Q. And was that accessible through VPN?

15:26:28 11 A. To individuals who had the right access

15:26:31 12 permissions.

15:26:32 13 Q. Including the four Sage engineers?

15:26:35 14 A. I would have to check. Probably, but I would

15:26:39 15 need to confirm it.

15:26:40 16 Q. Was it ever established or configured for FTP

15:26:45 17 access --

15:26:45 18 A. No.

15:26:49 19 Q. -- that shared directory?

15:26:50 20 A. No.

15:26:53 21 Q. Your project directory, was that accessible to

15:26:56 22 anyone other than yourself?

15:26:58 23 A. No.

15:27:00 24 Q. Have the contents of the shared directory been

15:27:03 25 produced in this case to your knowledge?

15:27:19 1 A. Possibly not all of the contents.

15:27:22 2 Q. And why do you say "possibly not"?

15:27:25 3 A. Because there's overlap between my personal

15:27:30 4 project directory and the shared directory. I was the

15:27:33 5 source of most of the information that went into the

15:27:37 6 shared directory, but it's possible that there's not

15:27:40 7 complete overlap.

15:27:43 8 Q. Well, do you know one way or the other if the

15:27:46 9 shared directory contents have been produced separate

15:27:48 10 and apart from any production out of the project

15:27:48 11 directory that was in your own file?

15:27:50 12 A. No, the shared directory was not produced.

15:27:59 13 That's an oversight on my part.

15:28:01 14 Q. When these four engineers at issue in this

15:28:05 15 litigation generated work product such as an evaluation

15:28:10 16 under the CAST evaluation license, where was that work

15:28:15 17 product in the ordinary course of business kept?

15:28:24 18 A. I'm sorry, could you repeat the question?

15:28:25 19 Q. When the four engineers at issue in this

15:28:29 20 litigation generated work product such as an evaluation

15:28:33 21 or a design, where in the ordinary course of business

15:28:37 22 was that work product kept or stored?

15:28:39 23 A. Generally in a project repository.

15:28:44 24 Q. Is that something that's different from the

15:28:46 25 shared directory?

15:28:47 1 A. Yes. It's in the project database.  
 15:28:52 2 **Q. Is that something different from the project**  
 15:28:54 3 **directory in your own file?**  
 15:28:56 4 A. Yes.  
 15:28:57 5 **Q. Have the contents of that project repository**  
 15:29:00 6 **been produced in this litigation to your knowledge?**  
 15:29:14 7 A. I believe so, yes.  
 15:29:29 8 **Q. And functionally, what was the difference**  
 15:29:31 9 **between the project repository and the shared directory,**  
 15:29:35 10 **if any?**  
 15:29:37 11 A. The project repository was truly a design  
 15:29:41 12 database of the design itself. The shared directory  
 15:29:49 13 primarily contained documentation.  
 15:30:01 14 **Q. Was the project repository available to the**  
 15:30:05 15 **four engineers at issue in this case to your knowledge**  
 15:30:08 16 **through VPN?**  
 15:30:11 17 A. Yes.  
 15:30:22 18 MR. ZARIAN: Let's look at 138.  
 15:30:24 19 (Exhibit 138 marked.)  
 15:30:34 20 **Q. (BY MR. ZARIAN) Do you recognize this**  
 15:30:41 21 **document?**  
 15:30:57 22 A. Yes.  
 15:30:58 23 **Q. What do you understand Mr. Roberts' reference**  
 15:31:02 24 **to a "Schedule" to signify?**  
 15:31:11 25 A. I believe it would signify the project

15:32:57 1 A. Yes.  
 15:32:57 2 **Q. When you said the PLL and Xtal oscillators had**  
 15:33:03 3 **not yet been assigned, did you mean by that that work on**  
 15:33:06 4 **those oscillators relating to the 6482 project had not**  
 15:33:12 5 **yet been assigned?**  
 15:33:17 6 A. Yes.  
 15:33:19 7 **Q. Was the timer/event controller eventually**  
 15:33:24 8 **assigned to the Sage engineers?**  
 15:33:28 9 A. The event controller was not. The timer was  
 15:33:35 10 assigned to Sage.  
 15:33:37 11 **Q. And to whom was the PLL and Xtal oscillator**  
 15:33:46 12 **task assigned, if anyone?**  
 15:33:51 13 A. To designers in Arizona.  
 15:34:05 14 MR. ZARIAN: Let's take a look at 139.  
 15:34:08 15 (Exhibit 139 marked.)  
 15:34:19 16 **Q. (BY MR. ZARIAN) Did you receive this document**  
 15:34:24 17 **from Mr. Yearsley?**  
 15:34:36 18 A. Yes.  
 15:34:37 19 **Q. Who or what is, quote, "Tools," as referenced**  
 15:34:41 20 **in your e-mail?**  
 15:34:44 21 A. "Tools" refers to development tools personnel.  
 15:34:50 22 **Q. Who was that?**  
 15:34:59 23 A. I don't recall exactly who participated, but  
 15:35:04 24 it could have been Roger Ball or one or two other  
 15:35:21 25 members of the tools group.

15:31:15 1 schedule.  
 15:31:15 2 **Q. Is that the same as the development timeline?**  
 15:31:18 3 A. Yes.  
 15:31:21 4 **Q. And that has not yet been produced in this**  
 15:31:25 5 **case to your understanding; is that correct?**  
 15:31:27 6 A. It was produced.  
 15:31:27 7 MR. HUSCH: Objection, misstates.  
 15:31:29 8 **Q. (BY MR. ZARIAN) Oh, it was produced yesterday**  
 15:31:31 9 **on that DVD?**  
 15:31:32 10 A. Yes, sir.  
 15:31:44 11 **Q. Who had responsibility for maintaining that**  
 15:31:48 12 **document?**  
 15:31:52 13 A. That document was maintained by Steve Domer.  
 15:32:01 14 **Q. Was he a Zilog employee?**  
 15:32:04 15 A. He was an IXYS employee.  
 15:32:10 16 **Q. And what was his job title as of 2011?**  
 15:32:20 17 A. I don't recall. It was something to the  
 15:32:23 18 effect of design director or design manager.  
 15:32:32 19 **Q. So, the attachment shown in Exhibit No. 138,**  
 15:32:36 20 **do you understand that to be a copy of the then current**  
 15:32:39 21 **project schedule or development timeline?**  
 15:32:44 22 A. Yes.  
 15:32:47 23 **Q. Did you update that from time to time?**  
 15:32:50 24 A. Steve Domer updated that from time to time.  
 15:32:56 25 **Q. Did Steve participate in your weekly meetings?**

15:35:22 1 **Q. What was the issue here involving "escaped**  
 15:35:26 2 **addressing and data memory"?**  
 15:35:33 3 A. We were discussing how that feature worked and  
 15:35:43 4 Gyle's input on it was thought to be helpful.  
 15:35:51 5 MR. ZARIAN: Okay, why don't we take a break.  
 15:35:54 6 THE VIDEOGRAPHER: The time is 3:36 and we are  
 15:36:03 7 off the record.  
 15:36:04 8 (Recess held.)  
 15:51:51 9 THE VIDEOGRAPHER: We're on the record. The  
 15:52:02 10 time is 3:52.  
 15:52:04 11 **Q. (BY MR. ZARIAN) Mr. Staab, do you understand**  
 15:52:09 12 **that you're still under oath?**  
 15:52:11 13 A. Yes, sir.  
 15:52:15 14 **Q. Do you recall testifying that you believe**  
 15:52:19 15 **there may be a version of the CAST license agreement**  
 15:52:27 16 **subsequent to the evaluation license agreement?**  
 15:52:32 17 A. Yes, sir.  
 15:52:33 18 **Q. To your understanding, has that been produced**  
 15:52:39 19 **in this case?**  
 15:52:41 20 A. I don't know.  
 15:52:42 21 **Q. In the ordinary course of business would a**  
 15:52:46 22 **copy of that or any final license agreement have been**  
 15:52:52 23 **kept in your project directory?**  
 15:52:58 24 A. In my personal project directory, sometimes,  
 15:53:02 25 yes.



## **EXHIBIT M**

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Kennedy K. Luvai, ISB No. 8824  
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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

---

RELATED COUNTER ACTIONS

---

**Case No. CV OC 1123344**

**PLAINTIFF'S FIRST SET OF  
REQUESTS FOR PRODUCTION TO  
DEFENDANT ZILOG, INC.**

*The Honorable Thomas F. Neville*

Pursuant to Idaho Rule of Civil Procedure 34, plaintiff American Semiconductor, Inc. hereby request that defendant Zilog, Inc. produce copies of the documents and things set forth below within thirty (30) days at the offices of Parsons, Behle & Latimer, 960 Broadway Avenue, Suite 250, Boise, Idaho 83706, subject to the following definitions and instructions.

### **DEFINITIONS**

1. "DOCUMENT," as used herein, shall mean every writing or record of whatever type and description in the possession, custody or control of the Zilog, Inc. ("ZILOG") (including all writings and records that have been transferred from ZILOG to its accountants, attorneys, or consultants), however made, and includes all handwritten, typed, printed, recorded, transcribed, taped, filmed, graphic- or sound-reproduction material, magnetic cards or cartridges, optical storage devices, and computer records, printouts, runs, cards, tapes, or disks (together with all programming instructions and other material necessary for their use). "DOCUMENT" includes every copy of every document where such copy is not identical to the original because of any addition, deletion, alteration, or notation. "DOCUMENT" specifically includes, but is not limited to, statements or charts of organization; telephone and personnel directories; press releases; announcements; notices; statements of procedure and policy; biographies and personnel files; individual appointment calendars and schedules; card files; diaries; records of email; telephone logs; routing slips; records or evidence of incoming and outgoing telephone calls; itineraries; activity reports; travel vouchers and accounting; bank records; accounting and bookkeeping records and materials; financial records and statements; external or internal correspondence; cables; telexes; teletypes; telegrams; telecopies; verbal or written communications; memoranda; letters; messages; reports; plans; forecasts; summaries; briefing materials; studies; notes; working papers; graphs; maps; charts; diagrams; agendas; minutes;

transcripts, records, or summaries of any meeting, conversation, conference or communication; and all attachments to any of the items set forth in this paragraph.

2. "COMMUNICATIONS," as used herein, shall mean any transmission or exchange of information between two or more persons, orally or in writing, and includes, without limitation, any conversation, contact or discussion, whether face-to-face or by means of telephone, email, telegraph, telex, electronic or other media, whether by chance or design.

3. The "RELEVANT TIME PERIOD," as used herein, shall mean the period of time between January 1, 2009 and the present date.

4. "PLAINTIFF" and/or "ASI," as used herein, shall refer to American Semiconductor, Inc.

5. "ZILOG," "you," and "your," as used herein, shall refer to Zilog, Inc.

6. "SAGE," as used herein, shall refer to Sage Silicon Solutions, LLC.

7. "INDIVIDUALS," as used herein, shall refer to David Roberts, Gyle Yearsley, Russ Lloyd, Bill Tiffany and/or Evelyn Perryman, or any of them.

8. "Medium" or "media," as used herein, shall refer general to any means of mass communication including, without limitation, communication by or through television, radio, the Internet (including e-mail), printed brochures, catalogs, newspapers, magazines, periodicals, journals, leaflets, flyers, circulars, billboards, banners, or signs.

9. "Person" or "persons," as used herein, shall mean natural persons, all governmental entities, agencies, officers, departments, or affiliates of the United States of America, or any other governmental entity, and any corporation, foundation, partnership, proprietorship, association, organization, or group of natural persons.

10. "Agreement," as used herein, shall mean any contract, transaction, license, or other arrangement of any kind, whether conditional, executed, executory, express, or implied, and whether oral or written, in which rights are granted or obligations are assumed. The term "agreement" shall encompass completed, actual, contemplated, or attempted agreements or renewals of agreements.

11. "Thing(s)," as used herein, shall mean any tangible item, and shall be construed as broadly as possible under the Idaho Rules of Civil Procedure.

12. As used herein, the terms "relate" and "refer" are used in their broadest possible sense and include all matters comprising, constituting, containing, concerning, embodying, reflecting, involving, discussing, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, for each request whichever definition makes the request most inclusive.

13. As used herein, "and" and "or" shall each be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses that might otherwise be construed to be outside its scope.

14. As used herein, the singular form of a noun or a pronoun shall be considered to include within its meaning the plural form of a noun or a pronoun so used, and vice versa; the use of the masculine form of a pronoun shall be considered to include also within its meaning the feminine form of the pronoun so used, and vice versa; the use of any tense of any verb shall be considered to include within its meaning all other tenses of the verb so used.

### INSTRUCTIONS

1. All documents must be produced in a form that renders them susceptible to copying.
2. All electronic documents and records must be produced with an explanation sufficient to render the records and information intelligible.
3. Documents from any single file should be produced in the same order as they were found in such file. If copies of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the original.
4. Each document should be segregated and identified by the request to which it is primarily responsive or produced as it is kept in the ordinary course of business.
5. All requests herein are directed to those documents within your possession, custody or control, or within the possession, custody or control of your agents, servants and employees and your attorneys. They are also directed to those firms, corporations, partnerships, or trusts that you control and to documents in the possession, custody or control of employees, agents and representatives of such entities.
6. If any of the documents requested herein are no longer in your possession, custody or control, identify each such requested document by date, type of document, person(s) from whom sent, person(s) to whom sent, and person(s) receiving copies and provide a summary of its pertinent contents.
7. If any of the documents requested herein has been destroyed or is no longer in existence, for any reason, describe the content of such document as completely as possible, the date of such destruction and the name of the person who ordered or authorized such destruction.

8. With respect to all documents that you are withholding because the document is asserted to be immune from discovery, state separately with respect to each document:

- (a) the general nature of such document, *i.e.*, whether it is a letter, memorandum, report, pamphlet, etc.;
- (b) the date on which each such document or thing was created, reproduced or transcribed;
- (c) the name, title, and business address of each person who signed or prepared each such document and the name and business address of each person who has edited, corrected, revised or amended the document;
- (d) the name and business address of each person to whom each such document was communicated or made available, or otherwise known to you as being an intended or actual recipient of a copy thereof;
- (e) the name and business address of each person having knowledge of the contents of the document;
- (f) the name and business address of each person having possession, custody, or control of the document or any identical or non-identical copy;
- (g) the number of pages;
- (h) a brief description of the nature and subject matter of the document in sufficient detail to permit other parties to this action to assess the applicability of the asserted privilege or immunity;
- (i) the paragraph(s) of the request to which the document is responsive; and
- (j) the grounds for the claimed immunity.

9. There shall be a continuing duty on ZILOG to furnish additional documents in response to these Document Requests in accordance with Rule 26(e) of the Idaho Rules of Civil Procedure. Any additional information relating in any way to these requests that you acquire, or that becomes known to you, up to and including the time of trial, shall be furnished to ASI promptly after such information is acquired by you or becomes known to you.

10. If you find any request or any term used in a request to be vague, ambiguous, subject to varying interpretations, or unclear, state what portion of the request or term you find to be vague, ambiguous, subject to varying interpretations, or unclear and state the construction employed by you in responding to the request.

11. In producing documents and things responsive to these requests, ZILOG shall furnish all documents within its possession, custody, or control, regardless of whether these documents are possessed directly by ZILOG, or by its present or past agents, employees, representatives, investigators, or attorneys.

#### **DOCUMENT REQUESTS**

REQUEST FOR PRODUCTION NO. 1: All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and SAGE, on the other hand.

REQUEST FOR PRODUCTION NO. 2: All DOCUMENTS that evidence, reflect or refer to any business relationship between ZILOG, on the one hand, and the INDIVIDUALS, on the other hand.

REQUEST FOR PRODUCTION NO. 3: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any white paper, bid, proposal, or request for quotation between ZILOG, on the one hand, and SAGE and/or the INDIVIDUALS, on the other hand.



REQUEST FOR PRODUCTION NO. 4: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any agreement or understanding between ZILOG, on the one hand, and SAGE or the INDIVIDUALS, on the other hand.

REQUEST FOR PRODUCTION NO. 5: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between ZILOG or any of its employees or agents, on the one hand, and SAGE or the INDIVIDUALS or any of their employees or agents, on the other hand.

REQUEST FOR PRODUCTION NO. 6: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS between Rick White, on the one hand, and SAGE, ZILOG, or the INDIVIDUALS or any of their employees or agents, on the other hand.

REQUEST FOR PRODUCTION NO. 7: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer to ASI or any of its employees or agents.

REQUEST FOR PRODUCTION NO. 8: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer SAGE or the INDIVIDUALS or any of their employees or agents.

REQUEST FOR PRODUCTION NO. 9: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any invoice or statement of services received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents.

REQUEST FOR PRODUCTION NO. 10: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any payment of any kind, in any form, made by ZILOG, during the RELEVANT TIME PERIOD, to SAGE or the INDIVIDUALS or any of their employees or agents.

REQUEST FOR PRODUCTION NO. 11: All DOCUMENTS that evidence, reflect, refer to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.

REQUEST FOR PRODUCTION NO. 12: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS relating to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents.

REQUEST FOR PRODUCTION NO. 13: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design data generated in connection with any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents, design including without limitation any and all such design documentation, test benches, schematics, code, scripts, simulations, data repositories, and revision history logs.

REQUEST FOR PRODUCTION NO. 14: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any design documents and/or design files received by ZILOG, during the RELEVANT TIME PERIOD, from SAGE or the INDIVIDUALS or any of their employees or agents, including with limitation any and all such design schedules, design and device specifications, circuit schematics, feature sets, netlists, RLT design files, test vectors, design rules, electrical rules, layout views, GDSII files, design/layout scripts, VCD data files,


verification files, simulations, simulation results (graphical and test) and related information, and any documentation of any kind, name or nature, electronic or otherwise, containing information contained in a design document or design file.

REQUEST FOR PRODUCTION NO. 15: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any repository logs for designs and design changes received from SAGE, or from any third party intellectual property providers recommended by SAGE.

REQUEST FOR PRODUCTION NO. 16: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any all schematics, RTL, gds, specifications, test benches, simulation reports, and physical verification reports and related information that were modified in any way by SAGE.

DATED this 12th day of July, 2013.

PARSONS BEHLE & LATIMER

By:   
Kennedy K. Luvai  
Attorneys for Plaintiff American  
Semiconductor, Inc., an Idaho Corporation

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12th day of July, 2013, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley  
and William Tiffany

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☒ Email: gary@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
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Homedale, ID 83628  
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Facsimile: (208) 337-4854  
Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley  
and William Tiffany

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☐ Hand Delivered  
☐ Overnight Mail  
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Gerald T. Husch  
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Kennedy K. Luvai

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NO. \_\_\_\_\_  
AM. \_\_\_\_\_ FILED \_\_\_\_\_ P.M. \_\_\_\_\_

JUL 12 2013

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 112334

*The Honorable Thomas F. Neville*

**NOTICE OF SERVICE OF  
DISCOVERY REQUESTS**

I hereby certify that on the 12th day of July, 2013, I caused to be served a true and correct copy of **PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT ZILOG, INC.**, along with this **NOTICE OF SERVICE OF DISCOVERY REQUESTS**, to the following by the method indicated:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley  
and William Tiffany

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
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☐ Facsimile  
☒ Email: gary@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
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Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley  
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Gerald T. Husch  
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Attorneys for Defendant Zilog, Inc.

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\_\_\_\_\_  
Kennedy K. Luvai

## **EXHIBIT N**

Gerald T. Husch, ISB No. 2548  
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Telephone (208) 345-2000  
Facsimile (208) 385-5384  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

Case No. CV OC 1123344

**DECLARATION OF DAN EATON IN  
OPPOSITION TO AMERICAN  
SEMICONDUCTOR, INC.'S  
RENEWED MOTION TO COMPEL  
AGAINST DEFENDANT ZILOG, INC.**

**DECLARATION OF DAN EATON IN OPPOSITION TO AMERICAN  
SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL AGAINST  
DEFENDANT ZILOG, INC. - 1**

Client: 1145788.1  
**COPY**  
000753



AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

DAN EATON declares and states as follows:

1. I am now and have been since 2009 Vice President and General Counsel of the Defendant, Zilog, Inc. ("Zilog"). Prior to that time, I was employed by Zilog as its Director of Intellectual Property. I hold a juris doctorate in Intellectual Property Law from Santa Clara University School of Law. I also hold a Bachelor of Science in Electrical Engineering from New Mexico State University. I am an active member in good standing of the California State Bar.

2. I am making this declaration on the basis of my personal knowledge as a Zilog employee and in opposition to Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc. ("ASI's Renewed Motion to Compel"), filed herein on or about December 27, 2013.

3. In ASI's Renewed Motion to Compel, ASI alleges:

[W]ith respect to certain "native" electronic files produced on October 7, 2013, ASI submits that Zilog should be directed to make available the necessary specialized software to allow counsel for ASI to review such files.

ASI's Renewed Motion to Compel, p. 2. I assume that ASI's is referring to software required to open Cadence-related files, based on ASI's counsel's correspondence of December 2, 2013, to Zilog's counsel, wherein ASI's counsel states:

[P]lease confirm that Zilog will provide this office with software necessary to open Cadence-related files, particularly those bearing .cd%, cdb and .xx file extensions.

Declaration of Kennedy K. Luvai in Support of Plaintiff American Semiconductor, Inc.'s  
Renewed Motion to Compel Against Defendant Zilog, Inc., Ex. A., p. 4, § D.

4. There is a substantial issue as to whether Zilog may lawfully provide ASI's counsel with the Cadence software requested by ASI because Zilog does not own the requested software. Zilog licenses the software necessary to open its Cadence-related files, including those bearing .cd%, cdb and .xx file extensions, from Cadence Design Systems, pursuant to a written license agreement.

5. That license agreement ("Agreement") between Cadence Design Systems and Zilog is based on a form provided by Cadence Design Systems to Zilog and states in pertinent part that:

(a) "The Licensed Program . . . [is] the confidential and proprietary property of Cadence [Design Systems] or third parties from whom Cadence [Design Systems] has obtained rights."

(b) "Cadence [Design Sytems] grants and [Zilog] accepts, subject to this Agreement, a limited license to internally use each Licensed Program on the Designated Equipment at the Designated Site . . . ."

(c) "Each license granted hereunder authorizes only [Zilog's] Licensed Use of the Licensed Program(s) on specifically identified Designated Equipment at the specifically identified Designated Site."

(d) The "Designated Site" means "the specific address of [Zilog's] facility consisting of one or more buildings within a radius of one mile of where the Designated Equipment upon which the Licensed Programs are installed."

(e) Each "Licensed Program" is licensed to Zilog "solely for [Zilog's] internal purposes."

(f) "Documentation" means "any and all information, written or otherwise, provided to [Zilog] by Cadence [Design Systems] describing the Licensed Program, its operation and matters related to its Licensed Use . . . in published written material, on magnetic media or communicated by electronic means."

(g) The "Licensed Use" is restricted to "the purpose of assisting Zilog in the design, test, or manufacture of electronic elements, circuits, or systems."

(h) Zilog "shall not sublicense, modify, or permit third parties to use or otherwise access the Licensed Program or the Documentation."

(i) "[Zilog] may make a reasonable number of copies of a Licensed Program" but may do so "only for archival purposes and only for use as back-ups when the Licensed Program is not operational."

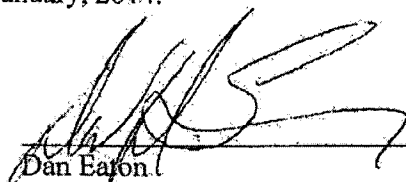
(j) "This Agreement . . . may be terminated by Cadence [Design Systems] . . . in the event of a material breach by [Zilog] of any provision of this Agreement where [Zilog] fails to correct such breach within 30 days of written notice . . . ."

6. In filing this declaration, Zilog does not waive its rights to object to production of the Agreement to any party to this litigation or any other third party, except that

Zilog will voluntarily provide a copy of the Agreement to the Court for the Court's review in camera at the Court's request.

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 7 day of January, 2014.

  
\_\_\_\_\_  
Dan Eaton

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January, 2014, I caused a true and correct copy of the foregoing **DECLARATION OF DAN EATON IN OPPOSITION TO AMERICAN SEMICONDUCTOR, INC.'S RENEWED MOTION TO COMPEL AGAINST DEFENDANT ZILOG, INC.** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

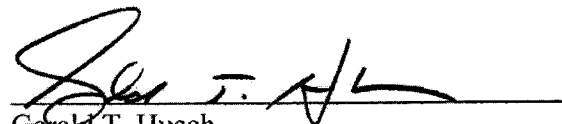
☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
☒ Electronic Mail

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Facsimile (208) 337-4854  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
☒ Electronic Mail

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
960 Broadway Ave., Suite 250  
Boise, ID 83706  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
Gerald T. Husch

## **EXHIBIT O**

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
PARSONS BEHLE & LATIMER  
960 South Broadway Avenue, Suite 250  
Boise, ID 83706  
Telephone: (208) 562-4900  
Facsimile: (208) 562-4901  
Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

---

RELATED COUNTER ACTIONS

---

**Case No. CV OC 1123344**

**PLAINTIFF'S SECOND SET OF  
REQUESTS FOR PRODUCTION TO  
DEFENDANT ZILOG, INC.**

*The Honorable Thomas F. Neville*

Pursuant to Idaho Rule of Civil Procedure 34, plaintiff American Semiconductor, Inc. hereby request that defendant Zilog, Inc. produce copies of the documents and things set forth below within thirty (30) days at the offices of Parsons, Behle & Latimer, 800 West Main Street, Suite 1300, Boise, Idaho 83702, subject to the following definitions and instructions.

### **DEFINITIONS**

1. "DOCUMENT," as used herein, shall mean every writing or record of whatever type and description in the possession, custody or control of the Zilog, Inc. ("ZILOG") (including all writings and records that have been transferred from ZILOG to its accountants, attorneys, or consultants), however made, and includes all handwritten, typed, printed, recorded, transcribed, taped, filmed, graphic- or sound-reproduction material, magnetic cards or cartridges, optical storage devices, and computer records, printouts, runs, cards, tapes, or disks (together with all programming instructions and other material necessary for their use). "DOCUMENT" includes every copy of every document where such copy is not identical to the original because of any addition, deletion, alteration, or notation. "DOCUMENT" specifically includes, but is not limited to, statements or charts of organization; telephone and personnel directories; press releases; announcements; notices; statements of procedure and policy; biographies and personnel files; individual appointment calendars and schedules; card files; diaries; records of email; telephone logs; routing slips; records or evidence of incoming and outgoing telephone calls; itineraries; activity reports; travel vouchers and accounting; bank records; accounting and bookkeeping records and materials; financial records and statements; external or internal correspondence; cables; telexes; teletypes; telegrams; telecopies; verbal or written communications; memoranda; letters; messages; reports; plans; forecasts; summaries; briefing materials; studies; notes; working papers; graphs; maps; charts; diagrams; agendas; minutes;



transcripts, records, or summaries of any meeting, conversation, conference or communication; and all attachments to any of the items set forth in this paragraph.

2. "COMMUNICATIONS," as used herein, shall mean any transmission or exchange of information between two or more persons, orally or in writing, and includes, without limitation, any conversation, contact or discussion, whether face-to-face or by means of telephone, email, telegraph, telex, electronic or other media, whether by chance or design.

3. The "RELEVANT TIME PERIOD," as used herein, shall mean the period of time between January 1, 2009 and the present date.

4. "PLAINTIFF" and/or "ASI," as used herein, shall refer to American Semiconductor, Inc.

5. "ZILOG," "you," and "your," as used herein, shall refer to Zilog, Inc.

6. "SAGE," as used herein, shall refer to Sage Silicon Solutions, LLC.

7. "INDIVIDUALS," as used herein, shall refer to David Roberts, Gyle Yearsley, Russ Lloyd, Bill Tiffany and/or Evelyn Perryman, or any of them.

8. "Medium" or "media," as used herein, shall refer general to any means of mass communication including, without limitation, communication by or through television, radio, the Internet (including e-mail), printed brochures, catalogs, newspapers, magazines, periodicals, journals, leaflets, flyers, circulars, billboards, banners, or signs.

9. "Person" or "persons," as used herein, shall mean natural persons, all governmental entities, agencies, officers, departments, or affiliates of the United States of America, or any other governmental entity, and any corporation, foundation, partnership, proprietorship, association, organization, or group of natural persons.

10. "Agreement," as used herein, shall mean any contract, transaction, license, or other arrangement of any kind, whether conditional, executed, executory, express, or implied, and whether oral or written, in which rights are granted or obligations are assumed. The term "agreement" shall encompass completed, actual, contemplated, or attempted agreements or renewals of agreements.

11. "Thing(s)," as used herein, shall mean any tangible item, and shall be construed as broadly as possible under the Idaho Rules of Civil Procedure.

12. As used herein, the terms "relate" and "refer" are used in their broadest possible sense and include all matters comprising, constituting, containing, concerning, embodying, reflecting, involving, discussing, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to, for each request whichever definition makes the request most inclusive.

13. As used herein, "and" and "or" shall each be construed disjunctively or conjunctively as necessary in order to bring within the scope of the request all responses that might otherwise be construed to be outside its scope.

14. As used herein, the singular form of a noun or a pronoun shall be considered to include within its meaning the plural form of a noun or a pronoun so used, and vice versa; the use of the masculine form of a pronoun shall be considered to include also within its meaning the feminine form of the pronoun so used, and vice versa; the use of any tense of any verb shall be considered to include within its meaning all other tenses of the verb so used.

### INSTRUCTIONS

1. All documents must be produced in a form that renders them susceptible to copying.

2. All electronic documents and records must be produced with an explanation sufficient to render the records and information intelligible.

3. Documents from any single file should be produced in the same order as they were found in such file. If copies of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the original.

4. Each document should be segregated and identified by the request to which it is primarily responsive or produced as it is kept in the ordinary course of business.

5. All requests herein are directed to those documents within your possession, custody or control, or within the possession, custody or control of your agents, servants and employees and your attorneys. They are also directed to those firms, corporations, partnerships, or trusts that you control and to documents in the possession, custody or control of employees, agents and representatives of such entities.

6. If any of the documents requested herein are no longer in your possession, custody or control, identify each such requested document by date, type of document, person(s) from whom sent, person(s) to whom sent, and person(s) receiving copies and provide a summary of its pertinent contents.

7. If any of the documents requested herein has been destroyed or is no longer in existence, for any reason, describe the content of such document as completely as possible, the date of such destruction and the name of the person who ordered or authorized such destruction.

8. With respect to all documents that you are withholding because the document is asserted to be immune from discovery, state separately with respect to each document:

- (a) the general nature of such document, *i.e.*, whether it is a letter, memorandum, report, pamphlet, etc.;
- (b) the date on which each such document or thing was created, reproduced or transcribed;
- (c) the name, title, and business address of each person who signed or prepared each such document and the name and business address of each person who has edited, corrected, revised or amended the document;
- (d) the name and business address of each person to whom each such document was communicated or made available, or otherwise known to you as being an intended or actual recipient of a copy thereof;
- (e) the name and business address of each person having knowledge of the contents of the document;
- (f) the name and business address of each person having possession, custody, or control of the document or any identical or non-identical copy;
- (g) the number of pages;
- (h) a brief description of the nature and subject matter of the document in sufficient detail to permit other parties to this action to assess the applicability of the asserted privilege or immunity;
- (i) the paragraph(s) of the request to which the document is responsive; and
- (j) the grounds for the claimed immunity.

9. There shall be a continuing duty on ZILOG to furnish additional documents in response to these Document Requests in accordance with Rule 26(e) of the Idaho Rules of Civil Procedure. Any additional information relating in any way to these requests that you acquire, or that becomes known to you, up to and including the time of trial, shall be furnished to ASI promptly after such information is acquired by you or becomes known to you.

10. If you find any request or any term used in a request to be vague, ambiguous, subject to varying interpretations, or unclear, state what portion of the request or term you find to be vague, ambiguous, subject to varying interpretations, or unclear and state the construction employed by you in responding to the request.

11. In producing documents and things responsive to these requests, ZILOG shall furnish all documents within its possession, custody, or control, regardless of whether these documents are possessed directly by ZILOG, or by its present or past agents, employees, representatives, investigators, or attorneys.

#### DOCUMENT REQUESTS

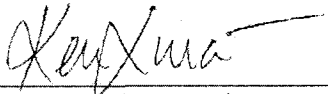
REQUEST FOR PRODUCTION NO. 17: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any and all actual or proposed contractual agreements or arrangements (including, without limitation, any licensing agreement, assignment or purchase and sale agreement) relating to any software used to create and/or access Cadence-related files as produced by ZILOG in this litigation.

REQUEST FOR PRODUCTION NO. 18: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any and all actual or proposed contractual agreements or arrangements (including, without limitation, any licensing agreement, assignment or purchase and sale agreement) relating to any software used to create and/or access files produced by Zilog

in this litigation and bearing the following file extensions: (a) .lvs; (b) .h; (c) .c; (d) .cmd; (e) .cdl; (f) .gds; (g) .spi; (h) asm; (i) .v; (j) .vhd; (j) .tcl; (k) .in; and (l) .project.

DATED this 13th day of January, 2014.

PARSONS BEHLE & LATIMER

By:   
Kennedy K. Luvai  
Attorneys for Plaintiff American  
Semiconductor, Inc., an Idaho Corporation

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13th day of January, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
Attorney for Defendants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley  
and William Tiffany

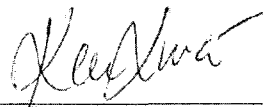
<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: gary@cooper-larsen.com

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Attorney for Counterclaimants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley  
and William Tiffany

<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: rmetcalf@cableone.net

Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
Attorneys for Defendant Zilog, Inc.

<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: srt@moffatt.com gth@moffatt.com

  
\_\_\_\_\_  
Kennedy K. Luvai

## **EXHIBIT P**



Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DEFENDANT ZILOG, INC.'S  
RESPONSES TO PLAINTIFF'S  
SECOND SET OF REQUESTS FOR  
PRODUCTION**

COMES NOW defendant Zilog, Inc., by and through undersigned counsel of record, and responds to plaintiff's second set of requests for production as follows:

REQUEST FOR PRODUCTION NO. 17: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any and all actual or proposed contractual agreements or arrangements (including, without limitation, any licensing agreement, assignment or purchase and sale agreement) relating to any software used to create and/or access Cadence-related files as produced by ZILOG in this litigation.

RESPONSE NO. 17: Defendant objects to this discovery request on the grounds stated in the Declaration of Dan Eaton in Opposition to American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc. and on the following grounds.

The request is vague and unintelligible and requires Zilog and its counsel to guess and to speculate as to its meaning.

The discovery request is overbroad and seeks discovery of documents that are neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence and are therefore outside the scope of discovery as defined in Idaho Rule of Civil Procedure 26(b)(1).

This request, read broadly, seeks discovery of information that is protected from discovery by virtue of the work product doctrine under the common law and/or as set forth in Idaho Rule of Civil Procedure 26(b)(3).

This request, read broadly, seeks discovery of information that is protected from discovery by virtue of the attorney-client privilege under Idaho Rule of Evidence 502 and/or common law.

The discovery sought is obtainable from some other source that is more convenient, less burdensome and/or less expensive.

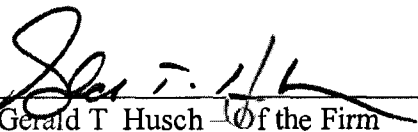
The burden and/or expense that this proposed discovery request would impose upon Zilog would outweigh the likely benefit of the discovery, taking into account the needs of the case, the importance of the issues at stake, the importance of the proposed discovery in resolving the issues at stake.

REQUEST FOR PRODUCTION NO. 18: All DOCUMENTS that evidence, reflect, refer to, constitute or contain any and all actual or proposed contractual agreements or arrangements (including, without limitation, any licensing agreement, assignment or purchase and sale agreement) relating to any software used to create and/or access files produced by Zilog in this litigation and bearing the following file extensions: (a) .lvs; (b) .h; (c) .c; (d) .cmd; (e) .cdl; (f) .gds; (g) .spi; (h) [.]asm; (i) .v; (j) .vhd; (j) [sic].tcl; (k) .in; and (l) .project.

RESPONSE NO. 18: See Response to Request for Production No. 17 above.

DATED this 12th day of February, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch - Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February, 2014, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG, INC.'S RESPONSES TO PLAINTIFF'S SECOND SET OF REQUESTS FOR PRODUCTION** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

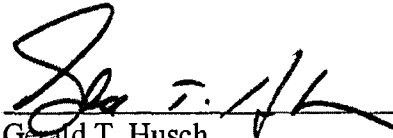
☐ U.S. Mail, Postage Prepaid  
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☐ Overnight Mail  
☒ Facsimile

Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Facsimile (208) 337-4854  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
800 W. Main St., Suite 1300  
Boise, ID 83702  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile

  
Gerald T. Husch

## **EXHIBIT Q**

**PARSONS  
BEHLE &  
LATIMER**

800 West Main Street, Suite 1300  
Boise, Idaho 83702  
Main 208.562.4900

A Professional  
Law Corporation

Kennedy K. Luvai  
Registered Patent Attorney  
Direct 208.562.4892  
KLuvai@parsonsbehle.com

February 20, 2014

**VIA FACSIMILE**

Gary L. Cooper  
Cooper & Larsen Chartered  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229

Gerald T. Husch  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

Russell G. Metcalf  
Metcalf Law Office, PLLC  
P.O. Box 385  
Homedale, ID 83628

**Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.,*  
Case No. CV OC 1123344**

Dear Counsel:

Enclosed please find the following subpoena being issued pursuant to Rule 45 of the Idaho Rules of Civil Procedure:

**I.R.C.P. Rule 45 Subpoena Duces Tecum to Cadence Design Systems, Inc.**

Pursuant to Rule 45(b)(2), we are serving you with copies of the subpoena seven (7) days prior to service on Cadence Design Systems, Inc. Please advise if you consent to waive the seven (7) day notice requirement under the Rule and we will proceed with service immediately. In any event, if you have not notified us of any objection to the subpoena within seven (7) days from today, we will proceed with serving the same on Cadence Design Systems, Inc. on Thursday, February 27, 2014.

Gary L. Cooper  
Gerald T. Husch  
Russell G. Metcalf  
February 20, 2014  
Page Two

In the meantime, please feel free to give me a call if you wish to discuss any of the foregoing further.

Very truly yours,

PARSONS BEHLE & LATIMER

A handwritten signature in cursive script, appearing to read "Kennedy K. Luvai".

Kennedy K. Luvai

KKL:vrg  
Enclosure

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
PARSONS BEHLE & LATIMER  
800 W. Main Street, Suite 1300  
Boise, ID 83702  
Telephone: (208) 562-4900  
Facsimile: (208) 562-4901  
Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

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RELATED COUNTER ACTIONS

---

Case No. CV OC 112334

*The Honorable Thomas F. Neville*

**SUBPOENA DUCES TECUM TO  
CADENCE DESIGN SYSTEMS, INC.**



**THE STATE OF IDAHO TO:      CADENCE DESIGN SYSTEMS, INC.**  
**2655 Seeley Avenue**  
**San Jose, California 95134**

**YOU ARE HEREBY COMMANDED:**

☐ to appear in the Court at the place, date and time specified below to testify in the above case.

☐ to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

☒ to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below.

☐ to permit inspection of the following premises at the date and time specified below.

**PLACE, DATE AND TIME:**      Parsons Behle & Latimer  
800 W. Main Street, Suite 1300  
Boise, Idaho 83702

5:00 p.m., March 6, 2014

**DEFINITIONS:**

1.    "AGREEMENT," as used herein, means a contract, arrangement, or understanding, formal or informal, oral or written, (a) between Cadence Design Systems, Inc. ("CADENCE") and Zilog, Inc. ("ZILOG"), or (b) between CADENCE and ZILOG's parent company, IXYS Corporation, where ZILOG was understood to be an intended beneficiary.

2.    The "RELEVANT TIME PERIOD" means the period of time between January 1, 2009 and the present date.

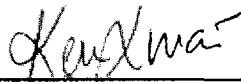
**DOCUMENTS TO BE PRODUCED:**

1. All AGREEMENTS that contain provisions in which CADENCE grants ZILOG a license to make use of CADENCE's software or software-related tools.
2. To the extent not covered in Request No. 1 above, all AGREEMENTS that reflect, constitute or contain restrictions or limitations as to authorized sites or locations wherein ZILOG may make use of the software or software-related tools referred to in Request No. 1.
3. To the extent not covered in Request No. 1 above, all AGREEMENTS that contain provisions limiting, restricting or regulating the disclosure of confidential or commercially sensitive information.

You are further notified that if you fail to produce or permit copying or inspection as specified above that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

DATED this 20th day of February, 2014.

By Order of the Court.



---

Kennedy K. Luvai  
*Attorneys for American Semiconductor, Inc.*

## **EXHIBIT R**

**PARSONS  
BEHLE &  
LATIMER**

800 West Main Street, Suite 1300  
Boise, Idaho 83702  
Main 208.562.4900

A Professional  
Law Corporation

**Kennedy K. Luval**  
Registered Patent Attorney  
Direct 208.562.4892  
KLuvai@parsonsbehle.com

March 13, 2014

**VIA FACSIMILE**

Gary L. Cooper  
Cooper & Larsen Chartered  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229

Gerald T. Husch  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

Russell G. Metcalf  
Metcalf Law Office, PLLC  
P.O. Box 385  
Homedale, ID 83628

**Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.,*  
Case No. CV OC 1123344**

Dear Counsel:

Enclosed please find the following subpoena being issued pursuant to Rule 45 of the Idaho Rules of Civil Procedure:

**I.R.C.P. Rule 45 Subpoena Duces Tecum to Synopsys, Inc.**

Pursuant to Rule 45(b)(2), we are serving you with copies of the subpoena seven (7) days prior to service on Synopsys, Inc. Please advise if you consent to waive the seven (7) day notice requirement under the Rule and we will proceed with service immediately. In any event, if you have not notified us of any objection to the subpoena within seven (7) days from today, we will proceed with serving the same on Synopsys, Inc. on Thursday, March 20, 2014.

Gerry, in the meantime and as you may be aware, we have previously requested that Zilog produce documents responsive to the enclosed subpoena, but those have yet to be produced. This request was fairly covered in Plaintiff's Second Set of Requests for Production to Defendant Zilog, Inc. Please let us know, in writing, by March 19, 2014 whether Zilog will produce responsive documents and, if not, the basis for that continued refusal.

Gary L. Cooper  
Gerald T. Husch  
Russell G. Metcalf  
March 13, 2014  
Page Two

In the meantime, please feel free to call if you wish to discuss further.

Very truly yours,

PARSONS BEHLE & LATIMER



Kennedy K. Luvai

KKL:vrg  
Enclosure

John N. Zarian, ISB No. 7390  
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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 112334

*The Honorable Thomas F. Neville*

**SUBPOENA DUCES TECUM TO  
SYNOPSYS, INC.**

THE STATE OF IDAHO TO:      **SYNOPSYS, INC.**  
   **700 East Middlefield Road**  
   **Mountain View, CA 94043**

**YOU ARE HEREBY COMMANDED:**

[ ] to appear in the Court at the place, date and time specified below to testify in the above case.

[ ] to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

[X] to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below.

[ ] to permit inspection of the following premises at the date and time specified below.

**PLACE, DATE AND TIME:**      Parsons Behle & Latimer  
   800 W. Main Street, Suite 1300  
   Boise, Idaho 83702

5:00 p.m., March 27, 2014

**DEFINITIONS:**

1.     "AGREEMENT," as used herein, means a contract, arrangement, or understanding, formal or informal, oral or written, (a) between Synopsys, Inc. ("SYNOPSYS") and Zilog, Inc. ("ZILOG"), or (b) between SYNOPSYS and ZILOG's parent company, IXYS Corporation, where ZILOG was understood to be an intended beneficiary.

2.     The "RELEVANT TIME PERIOD" means the period of time between January 1, 2009 and the present date.

**DOCUMENTS TO BE PRODUCED:**

1. All AGREEMENTS that contain provisions in which SYNOPSYS grants ZILOG a license to make use of SYNOPSYS's software or software-related tools.
2. To the extent not covered in Request No. 1 above, all AGREEMENTS that reflect, constitute or contain restrictions or limitations as to authorized sites or locations wherein ZILOG may make use of the software or software-related tools referred to in Request No. 1.
3. To the extent not covered in Request No. 1 above, all AGREEMENTS that contain provisions limiting, restricting or regulating the disclosure of confidential or commercially sensitive information.

You are further notified that if you fail to produce or permit copying or inspection as specified above that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

DATED this 20th day of March, 2014.

By Order of the Court.



---

Kennedy K. Luvai  
*Attorneys for American Semiconductor, Inc.*



## **EXHIBIT S**

**PARSONS  
BEHLE &  
LATIMER**

800 West Main Street, Suite 1300  
Boise, Idaho 83702  
Main 208.562.4900

A Professional  
Law Corporation

Kennedy K. Luvai  
Registered Patent Attorney  
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KLuvai@parsonsbehle.com

March 19, 2014

VIA FAX

Gerald T. Husch  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

Re: American Semiconductor v. Zilog

Dear Gerry:

We write to follow-up with regard to various documents that are yet to be produced by Zilog, Inc. ("Zilog"). As you know, Mr. Staab testified, under oath, as to the existence of a final license agreement between Zilog and CAST. In fact, he testified that the final license agreement included a reference to Sage but could not confirm its production. We have reviewed Zilog's production and have been unable to locate it. Accordingly, we request that Zilog produce that final license agreement within the next ten (10) days.

Additionally, could you please confirm by the end of this week as to whether Zilog actually intends to produce responsive records that were or remain part of "Shared Directory" – the directory identified by Mr. Staab in his deposition testimony? Nevertheless, we request that Zilog produce any and all such responsive records within the next ten (10) days.

Sincerely,

PARSONS BEHLE & LATIMER



Kennedy K. Luvai

KKL:vrg

cc: Russell G. Metcalf  
Gary L. Cooper

APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

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Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTIONS TO  
COMPEL: (1) PRODUCTION OF  
DOCUMENTS BY ZILOG; AND (2)  
RESUMPTION OF ZILOG'S RULE  
30(b)(6) DEPOSITION**

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Pursuant to Rule 37 of the Idaho Rules of Civil Procedure, plaintiff American Semiconductor, Inc. ("ASI") respectfully submits the following memorandum in support of its Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition (or in the alternative the individual depositions of Zilog's witnesses) in Boise.

### **INTRODUCTION**

Defendant Zilog, Inc. ("Zilog") has had more than ample time to comply with ASI's discovery requests seeking disclosure of information relevant to this action. Regrettably, Zilog has shirked its discovery obligations in that it has produced some records in a very untimely fashion and, equally troubling, has flatly refused to produce other relevant records.

Here, in spite of ASI having sought production of relevant records back in July 2013, Zilog produced over 22,000 pages of project-related records several weeks after its Rule 30(b)(6) deposition was commenced and, remarkably, on the eve of – literally the afternoon before - the examination of one of its key witnesses in this action. Compounding matters further, Zilog has failed to produce other project-related records that it admittedly neglected to search for and has to date refused to produce relevant and discoverable licensing records.

Simply stated, ASI has been deprived of a fair opportunity to review the untimely produced or withheld records as part of its preparations with regard to the Rule 30(b)(6) depositions of Zilog and Sage Silicon Solutions, LLC ("Sage"), respectively, that have already commenced but which remain suspended. As a result, the Court should compel Zilog to produce any withheld records within 14 days of any ruling to that effect. Additionally, the Court should compel Zilog to produce its corporate witnesses to be examined in Boise (and at Zilog's expense) as to untimely produced or improperly withheld records within 28 days of the Court's

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ruling or, in the alternative, should order Zilog to produce its corporate witnesses to have their individual depositions taken (again, at Zilog's expense) with regard to the same matters raised in the untimely produced or improperly withheld records.

Moreover, after having been compelled by the Court to produce its corporate designees to be examined in Boise as part of its Rule 30(b)(6) deposition, Zilog now seeks to hide behind a misreading of Rule 30 in unjustifiably demanding that ASI should travel to Oregon in order to examine one of its corporate witnesses, Mr. Rick White. In truth, no such distinction exists and, Mr. White, as a former employee designated to testify on behalf of Zilog is as much a party witness to this action as are employee-designees that Zilog has so far produced.

Accordingly, Zilog's attempt to treat one of its party witnesses as a third party is without merit. Therefore, the Court should compel Zilog to either (a) produce Mr. White to be examined in Boise as a Zilog corporate witness, or (b) immediately designate a replacement corporate designee to be examined in Boise to the extent that Mr. White is unavailable. Under the circumstances, the Court should also find that Zilog properly bears the costs and expenses incurred in connection with producing Mr. White or a replacement corporate witness to be examined in Boise.

### **BACKGROUND**

**ASI's Motion to Compel Depositions.** On November 22, 2013 ASI served a Rule 30(b)(6) notice of deposition upon Zilog, therein listing 24 separate deposition topics. [Luvai Decl., Ex. A]. At about the same time, ASI also served a Rule 30(b)(6) notice of deposition upon Sage.

Because Sage and Zilog failed to make themselves available to be deposed within a reasonable timeframe, ASI was forced to move to compel the Rule 30(b)(6) deposition of both

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Sage and Zilog. (See Plaintiff American Semiconductor, Inc.'s Motion to Compel Rule 30(b)(6) Depositions of Defendants Sage Silicon Solutions, Inc. and Zilog, Inc., filed Dec. 27, 2013). As a result of Sage and Zilog having belatedly and after much prodding availed themselves to have their depositions commence on February 11, 2014 and February 12, 2014, respectively, the Court denied ASI's motion without prejudice. [Luvai Decl., Ex. C].

As to the location of Zilog's deposition, the Court was clear in that it further ordered "that the Rule 30(b)(6) deposition of Zilog, Inc. shall commence in Boise, Idaho starting at 9.00 a.m. (MST) on February 12, 2014 and that Zilog, Inc., shall produce at least three (3) corporate designees to testify on its behalf on that date." [*Id.*].

**The Rule 30(b)(6) Deposition of Zilog Begins.** On February 10, 2014, Zilog served an amended designation of witnesses listing its corporate designees as David Staab, Dat Huynh, Steve Darraugh and Rick White. [Luvai Decl., Ex. D]. The deposition of Zilog commenced, as ordered by the Court, on February 12, 2014 with the examinations of Mr. Darraugh, Mr. Huyhn, and Mr. Staab, in that order at Zilog's request and for its convenience. [Luvai Decl., Ex. E]. Because, as expected, time could not permit the completion of Mr. Staab's examination, counsel for the parties agreed to suspend the deposition and to resume Mr. Staab's examination on March 4, 2014. [See Luvai Decl., Ex. F].

**Zilog's Untimely Production of 22,272 "Project Directory" Records.** Remarkably, on March 3, 2014, the day prior to the resumption of Mr. Staab's examination, Zilog produced 22,272 pages of responsive records that it had failed to previously produce (the "March 3 Production"). [Luvai Decl., Ex. G]. Without waiving ASI's rights in connection with the Zilog's untimely March 3, 2014 production, counsel for ASI proceeded with the examination of Mr. Staab. [Luvai Decl., ¶ 10].

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During his examination as a Zilog corporate designee, Mr. Staab testified that the March 3 Production comprised a "Project Directory" that he neglected to search in for purposes of locating discoverable records. [Luvai Decl., Ex. L, Staab Dep. 211:23-213:25]. Indeed, Mr. Staab could not justify this inexplicable failure to search for discoverable records in what he testified was his "own file repository." [Staab Dep., 214:1-214:3 (testifying that "[he] blew it."); *see also* 364:19-21].

**Zilog's Revelation Regarding Withheld "Shared Directory" Records.** Mr. Staab later testified as to the existence of a "Shared Directory" that was separate and distinct from the "Project Directory" where Zilog stored files to facilitate sharing with the Sage defendants. [Staab Dep. 363:23-364:15]. According to Mr. Staab, the contents of the "Shared Directory" have not been produced in response to ASI's discovery requests. [Staab Dep. 366:8-366:13 ("No, the shared directory was not produced. That's an oversight on my part.")].

**Zilog's Refusals to Produce Mr. White as a Corporate Designee.** Zilog's Rule 30(b)(6) deposition was suspended or otherwise kept open, by agreement of counsel, in order to allow for Zilog to produce Mr. Rick White to be examined as a corporate designee. On March 14, 2014, ASI inquired as to Zilog's and Mr. White's respective availabilities for resumption of Zilog's Rule 30(b)(6) deposition in early April. [Luvai Decl., Ex. H].

Zilog responded on March 18, 2014 by arguing, without reference to authority, that Mr. White was no longer an employee and, therefore, ASI was required to travel to Oregon to examine him and suggested that Mr. White may make himself available to be examined in Boise at his leisure. [Luvai Decl., Ex. I]. ASI thereafter clarified that Mr. White was a party witness who Zilog was obligated to produce to be examined in Boise and, further, to the extent that Mr.

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White was unavailable to be examined, Zilog was obligated to immediately designate another corporate witness in his stead. [Luvai Decl., Ex. J].

Zilog has refused to produce Mr. White or a replacement witness to testify in his place as a Zilog corporate designee as to the matters Mr. White was to testify. Instead, on April 1, 2014, Zilog purported to file a motion for protective order – no memoranda or affidavits were filed with the motion.

**Zilog's Failure to Produce Licensing Records.** In addition to the foregoing, and in spite of ASI's requests that Zilog produce discoverable records comprising licensing agreements it had, during the relevant timeframe, with third parties CAST, Inc. ("CAST"), Cadence Design Systems, Inc. ("Cadence") and Synopsys, Inc. ("Synopsys"), Zilog has refused to do so. [Luvai Decl., ¶¶ 18-22].

While Zilog produced an "evaluation" license with regard to CAST, it has so far refused to produce any "final" license agreement whose existence Zilog has confirmed. [*Id.*; Staab Dep. 320:15-321:9 (confirming existence of the "final" license agreement and indicating that it identified and related to Sage)]. Zilog's production of the "evaluation" license was in response to a number of requests propounded as part of ASI's first set of document requests propounded in 2013, and was produced only after ASI moved to compel Zilog's production of records responsive to that set of document requests. [Luvai Decl., Ex. N]. The relevant requests sought production of:

- (a) "All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS from ZILOG and any of its employees or agents, during the RELEVANT TIME PERIOD, that refer to SAGE or the INDIVIDUALS or any of their employees and agents," (Request No. 8);
- (b) "All DOCUMENTS that evidence, reflect, refer to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD,

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTIONS TO COMPEL: (1)  
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by SAGE or the INDIVIDUALS or any of their employees or agents,” (Request No. 11); and

- (c) “All DOCUMENTS that evidence, reflect, refer to, constitute or contain any COMMUNICATIONS relating to any services provided or otherwise rendered to ZILOG, during the RELEVANT TIME PERIOD, by SAGE or the INDIVIDUALS or any of their employees or agents,” (Request No. 12).

Ignoring ASI’s follow-up requests that Zilog produce the “final” version of the CAST license agreement, Zilog has failed to comply. [*See e.g.* Luvai Decl., Ex. S].

Likewise, Zilog has refused to produce any of the license agreements it entered into with either Cadence or Synopsys, again in spite of ASI’s repeated requests. [*See* Luvai Decl., ¶¶ 18-22]. As part of Zilog’s opposition to a prior motion to compel that ASI was forced to file as a result of Zilog’s over-designation of its document productions as Attorneys’ Eyes Only, Zilog submitted a declaration from its general counsel, Mr. Dan Eaton, in which Mr. Eaton liberally quoted and testified as to the contents of a licensing agreement between Zilog and Cadence. [Luvai Decl., Ex. N]. Zilog, however, did not produce a copy of the license prompting ASI to serve its second set of document requests seeking production of that license, among other documents. [Luvai Decl., Ex. O].

Request No. 17 in ASI’s second set of document requests to Zilog sought production of “All DOCUMENTS that evidence, reflect, refer to, constitute or contain any and all actual or proposed contractual agreements or arrangements (including, without limitation, any licensing agreement, assignment or purchase and sale agreement) relating to any software used to create and/or access Cadence-related files as produced by ZILOG in this litigation.” [*Id.*].

The Synopsys license agreements were requested as part of Request No. 18 which generally sought production of “All DOCUMENTS that evidence, reflect, refer to, constitute or

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contain any and all actual or proposed contractual agreements or arrangements (including, without limitation, any licensing agreement, assignment or purchase and sale agreement) relating to any software used to create and/or access files produced by Zilog in this litigation and bearing the following file extensions: (a) .lvs; (b) .h; (c) .c; (d) .cmd; (e) .cdl; (f) .gds; (g) .spi; (h) asm; (i) .v; (j) .vhd; (j) .tcl; (k) .in; and (l) .project.” [Id.].

Given Zilog’s failure to produce the Cadence and Synopsys license agreements, ASI was forced to incur the inconvenience and expense of serving subpoenas on these third parties. [Luvai Decl., Exs. Q, R]. In response, Cadence produced some licensing agreements; however, it has yet to produce a copy of the licensing agreement Mr. Eaton testified to in his declaration. [Luvai Decl., ¶ 21]. For its part, Synopsys has thus far failed to comply with the subpoena served on it by ASI seeking production of the relevant licensing agreements it entered into with Zilog. [Luvai Decl., ¶ 22]. Accordingly, while ASI has sought to obtain the relevant Cadence and Synopsys licensing records from alternative sources, those efforts have been unsuccessful.

**Zilog’s Actions Have Hampered ASI’s Ability to Discover Relevant Facts.** In sum, ASI has not had a fair opportunity to examine Zilog’s and/or Sage’s corporate designees or witnesses as to matters or information set forth in files comprising the “project directory,” the “shared directory,” and licensing agreements between Zilog, on the one hand, and either CAST, Cadence, or Synopsys, on the other. Further, ASI continues to be prejudiced by Zilog’s refusals to produce one of its corporate designees, Mr. White, or a replacement witness to be examined in Boise.

## LEGAL STANDARD

Rule 26 of the Idaho Rules of Civil Procedure provides that a party “may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” I.R.C.P. 26(b)(1).

Rule 37 of the Idaho Rules of Civil Procedure provides that “[a] party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery.” I.R.C.P. 37(a). Further, “[a]n application for an order to a party may be made to the court in which the action is pending.” I.R.C.P. 37(a)(1).

## ARGUMENT

**A. ZILOG SHOULD BE COMPELLED TO PRODUCE WITHHELD RECORDS COMPRISING, WITHOUT LIMITATION, THE ‘SHARED DRIVE,’ AND CADENCE, SYNOPSIS AND CAST LICENSING AGREEMENTS.**

**1. “Shared Directory.”**

To-date, Zilog has failed to produce any of the records that comprise the “shared directory.” This directory, which ASI understands to be separate from the untimely produced “Project Directory,” was admittedly not searched as a result of an “oversight” on Zilog’s part.

In light of its usage, that is, as a repository for Zilog to store electronic files so as to facilitate sharing of the same with the defendant engineers who were at the time ASI employees, the “shared directory” is undoubtedly a repository of relevant records in this case. In spite of the foregoing, however, Zilog has failed to produce any records it identifies as comprising or having been extracted from the “shared directory.”

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Because Zilog does not have justifiable grounds for its failures to comply with ASI's discovery requests, an order compelling Zilog's compliance is warranted.

**2. CAST, Cadence and Synopsys Licenses.**

In response to ASI's first set of discovery requests, Zilog produced a license agreement it entered into with CAST. The license produced by Zilog was an "evaluation" license, however. Mr. Staab testified as to the existence of a "final" license agreement, which Zilog has not produced. In spite of ASI's repeated requests that Zilog produce this "final" license agreement, Zilog has yet to do so.

As part of its second set of document requests, ASI requested that Zilog produce, among other records, licensing agreements it entered into with Cadence and Synopsys. Zilog refused to produce any responsive records and thus forced ASI to incur the expense of issuing third party subpoenas to Cadence and Synopsys.

Cadence responded by producing certain license-related records, its production was and still is incomplete. Specifically, Cadence has yet to produce the licensing agreement between Zilog and Cadence that Zilog's general counsel quoted liberally from as part of a declaration that was submitted in opposition to ASI's motion to compel against Zilog. Despite ASI's repeated requests that Zilog produce that particular agreement, and associated records, Zilog has thus far refused to produce any such records.

Synopsys, for its part, acknowledged receipt of the subpoena seeking production of a narrow range of licensing records but has so far refused to comply. In the meantime, ASI continued to seek production of the Zilog-Synopsys licensing agreements from Zilog. In spite of ASI's repeated requests, Zilog has refused to produce such license-related records.

Because these requested license records relate to the nature and manner in which the Sage

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defendants provided certain design and related services at issue to Zilog, they are relevant and Zilog has no justifiable basis for withholding their production. Therefore, the Court should compel Zilog to produce the requested licensing records.

**B. THE COURT SHOULD COMPEL RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION TO FACILITATE EXAMINATIONS AS TO UNTIMELY PRODUCED OR IMPROPERLY WITHHELD RECORDS.**

As previously indicated, Zilog produced 22,272 pages of responsive records from the "Project Directory" on March 3, 2014, several weeks after the commencement of its Rule 30(b)(6) deposition. Notably, Zilog made this untimely and voluminous production the afternoon before the resumption of ASI's continued examination of Mr. Staab as part of Zilog's Rule 30(b)(6) deposition. Compounding matters further, Zilog has failed to produce any records from the separate "shared directory" nor has it produced CAST, Cadence and Synopsys-related licensing records as requested by ASI.

As a result, ASI's preparation with regard to the Rule 30(b)(6) depositions of Sage and Zilog was unfairly and prejudicially hampered as a result of (a) Zilog's untimely production of the "Project Directory" files, (b) Zilog's failure to produce "Shared Directory" files, and (c) Zilog's refusals to produce, as requested, licensing agreements and related records that it entered into with CAST, Cadence and Synopsys.

Accordingly, because Zilog's production of the "Project Directory" files was untimely, the Court should order a resumption of Zilog's Rule 30(b)(6) deposition in order to allow ASI to examine Zilog's corporate designees on information produced as part of the March 3, 2014 production. Likewise, should the Court find that Zilog's failure to produce the "Shared Directory" files and the requested CAST, Cadence and Synopsys licenses is without justification, it should compel Zilog to produce corporate designees to be examined on the information at

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issue as soon as is practicable after the withheld records are produced.

In the alternative, the Court should find that ASI may, at its discretion and at Zilog's expense, notice and take the individual depositions of Zilog's corporate designees and/or any other Zilog witnesses as to matters disclosed in any untimely produced or improperly withheld records.

**C. ZILOG SHOULD BE COMPELLED TO PRODUCE MR. WHITE (OR A REPLACEMENT WITNESS) TO BE EXAMINED AS A CORPORATE DESIGNEE.**

**1. Zilog's Suggestion that Mr. White Should be Treated as a Third Party Witness Because He is No Longer Employed by Zilog is Without Merit.**

Zilog's insistence that ASI is required to travel to Oregon in order to examine Mr. White as a Zilog corporate witness appears to be based on the premise that Mr. White's status as a former employee somehow makes him a *third party* to this action. While that may have been true had ASI noticed Mr. White's deposition as a non-party witness, that is not the case here. Mr. White was (and still is) designated as a Zilog corporate witness who is to be produced to testify on its behalf as to certain matters set forth in the Second Amended Notice of Rule 30(b)(6) Deposition of Defendant Zilog, Inc. (the "Deposition Notice"). [Luvai Decl., Ex. D].

Accordingly, Mr. White is as much a party witness whose testimony will be binding upon Zilog as are Mr. Staab, Mr. Darraugh and Mr. Huynh. Plainly stated, Mr. White is *not* a third party witness. To the extent that he is "no longer employed by Zilog," Mr. White falls under the category of "other persons *who consent* to testify on its behalf" under Rule 30(b)(6) (emphasis added). Thus, Mr. White's status as a former employee is immaterial for purposes of Rule 30(b)(6).

Zilog's contentions that Mr. White "is beyond the subpoena power of the Court" and that "Zilog has no power to require Mr. White to attend a deposition in Boise," [Luvai Decl., Ex. I], are not persuasive. Zilog is a party to this action and, thus, ASI is not required to subpoena any of Zilog's *self-designated* corporate designees in order for them to appear to be examined in Boise on designated matters. Besides, having *consented* to testify on Zilog's behalf in this action, Mr. White necessarily submitted himself to the jurisdiction of this Court as a Zilog party witness.

**2. To the Extent that Mr. White is Unavailable, Zilog is Obligated to Immediately Designate a Replacement Witness.**

If it is true, as Zilog contends, that Mr. White is "too busy to travel to Boise for a deposition" or that "Zilog has no power to require Mr. White to attend a deposition in Boise," [Luvai Decl., Ex. I], the onus is on Zilog to immediately designate and prepare a new witness to testify as to the matters Mr. White was expected to testify to. *See Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989)<sup>1</sup> (if it appears that the designated witness is unable to answer questions on matters specified in the deposition notice, the corporate entity must immediately designate a new witness).

Of course, if Zilog no longer employs anyone knowledgeable about the designated matter, it must prepare a representative to testify. *See e.g. Sprint Communications Co., L.P. v. Theglobe.com, Inc.*, 236 F.R.D. 524, 527-28 (D.Kan. 2006). In sum, Zilog cannot avoid its obligation to testify as to matters properly set forth in the Deposition Notice by designating

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<sup>1</sup> Because Rule 30(b)(6) of the Federal Rules of Civil Procedure is similar Rule 30(b)(6) of the Idaho Rules of Civil Procedure, interpretation of the federal rule by the federal courts is instructive. *See Chacon v. Sperry Corp.*, 111 Idaho 270, 275 (1986).

witnesses who are unwilling, unable and/or unavailable to testify. Zilog must either produce Mr. White or *immediately* designate another representative. Zilog has done neither.

**D. ZILOG PROPERLY BEARS COSTS AND EXPENSES INCURRED IN PRODUCING ITS WITNESSES TO BE EXAMINED IN BOISE.**

As with Mr. Staab, Mr. Darraugh and Mr. Huynh, Zilog properly bears any costs or expenses it may incur in producing Mr. White to be examined in Boise. While it is true that *some* federal courts have recognized a generalized “presumption” that the deposition of a corporation by its agents or representatives should ordinarily take place at its principal place of business, ASI is not aware of any Idaho court expressly adopting such a presumption.

In any event, the inquiry as to cost-shifting clearly does not end there given the fact courts do have broad *discretion* to require corporate defendants to produce officers or agents for depositions at locations other than the corporation’s principal place of business where, as here, there is no showing that the corporate defendant will suffer financial hardship. *See e.g. Aerocrine AB v. Apieron Inc.*, 267 F.R.D. 105, 108 (D.Del. 2010); *South Seas Catamaran, Inc. v. Motor Vessel Leeway*, 120 F.R.D. 14, 21 n. 5 (D.N.J. 1988).

Indeed, any generalized “presumption” that a corporate defendant be deposed at or near its principal place of business may be (easily) overcome by an analysis of appropriate factors, including: (a) the location of counsel for all parties in the forum; (b) the number of corporate representatives a party is seeking to depose; (c) the likelihood of significant discovery disputes arising that would necessitate resolution by the forum court; (d) whether the persons sought to be deposed often engage in travel for business purposes; and (e) the equities with regard to the nature of the claim and the parties’ relationship. *See E.I. DuPont de Nemours & Co. v. Kolon Industries, Inc.*, 268 F.R.D. 45, 54 (E.D.Va. 2010); *Armsey v. Medshares Mgmt. Servs., Inc.*, 184



F.R.D. 569, 571 (W.D.Va. 1998); *Nat'l Cmty. Reinvestment Coal. v. NovaStar Fin., Inc.*, 604 F.Supp.2d 26, 31 (D.D.C. 2009).

As to an application of the foregoing factors, ASI briefed this issue as part of its reply in further support of its motion to compel Rule 30(b)(6) depositions of Sage Silicon Solutions, LLC and Zilog, filed January 7, 2014. Moreover, the Court took up this issue in open court on January 10, 2014, and effectively found that the clear weight of these factors as supporting its exercise of discretion in requiring Zilog to produce its corporate designees to be deposed in Boise. In spite of ASI's briefing and the Court's consideration of these factors, Zilog has, to this day, avoided applying the foregoing factors to the circumstances in this case.

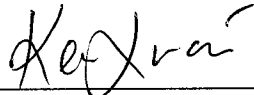
Consequently, ASI is left to conclude that Zilog does not genuinely contend that the foregoing factors would, in any way, serve to preclude the Court's exercise of discretion in finding Boise to be the appropriate location for the examination of Mr. White. It also follows that, in light of the propriety of Boise as the location for Mr. White's examination, Zilog properly bears the costs and expenses associated with producing him in Boise.

### **CONCLUSION**

For the foregoing reasons, the Court should compel (a) Zilog to produce the withheld "Shared Directory" and licensing records within 14 days of the Court's ruling, and (b) the resumption of Zilog's Rule 30(b)(6) deposition (or in the alternative the individual depositions of Zilog's witnesses) to occur in Boise within 28 days of the Court's ruling.

DATED: April 18, 2014.

PARSONS BEHLE & LATIMER

By   
\_\_\_\_\_  
John N. Zarian  
Kennedy K. Luvai  
Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTIONS TO COMPEL: (1)  
PRODUCTION OF DOCUMENTS BY ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE  
30(b)(6) DEPOSITION - 15**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of April, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
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David Roberts, Gyle Yearsley and William Tiffany*

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Kennedy K. Luvai

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTIONS TO COMPEL: (1)  
PRODUCTION OF DOCUMENTS BY ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE  
30(b)(6) DEPOSITION - 16**

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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, RUSSELL LLOYD, WILLIAM  
TIFFANY, EVELYN PERRYMAN, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 4:23

APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By ELYSHIA HOLMES  
DEPUTY

Case No. CV OC 1123344

**DECLARATION OF DAN EATON IN  
SUPPORT OF ZILOG, INC.'S MOTION  
FOR PROTECTIVE ORDER**

**DECLARATION OF DAN EATON IN SUPPORT OF ZILOG, INC.'S MOTION FOR  
PROTECTIVE ORDER - 1**

Client: 3275302.1

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94

Idaho Corporation,

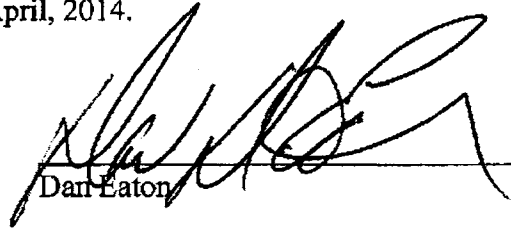
Counterdefendant.

DAN EATON declares and states as follows:

1. I am now and have been since 2009 Vice President and General Counsel of the Defendant, Zilog, Inc. ("Zilog"), and I am making this affidavit on the basis of my personal knowledge as such, in support of Zilog's Motion for Protective Order.
2. My office is located in Zilog's facility at 1590 Buckeye Drive, Milpitas, CA 95035, which is served by the Norman Y. Mineta San Jose International Airport ("San Jose Airport").
3. On May 9, 2013, I traveled via airplane to Boise, Idaho, to meet with Plaintiff American Semiconductor, Inc.'s President, Doug Hackler, and ASI's counsel, John Zarian.
4. On the day after that meeting, May 10, 2013 I flew from Boise to the San Jose Airport. Both Mr. Hackler and Mr. Zarian were on my flight from Boise to the San Jose Airport.
5. I was curious as to what business might bring Mr. Hackler and Mr. Zarian to San Jose, California, so I conducted an investigation of court records to determine if ASI was a party to any litigation in the San Jose area. As a result of that investigation, I discovered that ASI had filed another complaint, in the United States District Court for the Northern District of California in San Jose, alleging misappropriation of ASI's purported trade secrets. A true and correct copy of that complaint is attached hereto as Exhibit A.

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 17th day of April, 2014.

  
\_\_\_\_\_  
Dan Eaton

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 2014, I caused a true and correct copy of the foregoing **DECLARATION OF DAN EATON IN SUPPORT OF ZILOG, INC.'S MOTION FOR PROTECTIVE ORDER** to be served by the method indicated below, and addressed to the following:

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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

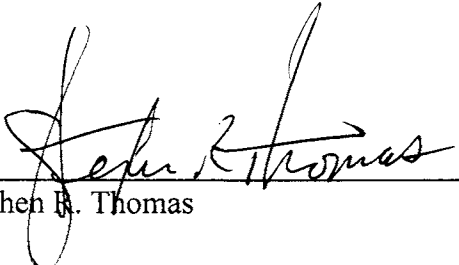
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\_\_\_\_\_  
Stephen R. Thomas

# **EXHIBIT A**



ORIGINAL

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Attorneys for Plaintiff  
American Semiconductor, Inc.

ADR

Filed

DEC - 4 2012

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

E-filing

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho corporation;

Plaintiff,

vs.

CALIFORNIA ASSIGNMENTS LLC, a  
California limited liability company;  
DEVELOPMENT SPECIALISTS, INC., an  
Illinois corporation; and DOES 1 through 10,  
inclusive;

Defendants.

Case No. **CV 12 - 6138**

COMPLAINT FOR:

1. CONVERSION
2. MISAPPROPRIATION  
OF TRADE SECRETS
3. INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

HRL

1 **NATURE OF THE ACTION**

2 1. This is an action arising out of defendants' unjustified and unlawful refusal to release  
3 (a) semiconductor masks (reticles) owned entirely by plaintiff and having a commercial value of more  
4 than \$750,000, and (b) intellectual property (including designs, recipes and process flows) reflecting  
5 more than ten years of development and a tremendous investment by plaintiff. Defendants are holding  
6 the foregoing property "hostage" at a (now shuttered) fabrication plant in San Jose, unless and until  
7 plaintiff pays some fraction of the "approximately \$140K" originally demanded from plaintiff – an  
8 amount that has never been owed or properly explained. Defendants have refused to allow any  
9 inspection by plaintiff of its own property, and have failed or refused to specify any statutory lien or  
10 basis for their commercially unreasonable conduct. Defendants' actions have interrupted plaintiff's  
11 business, resulted in lost sales, and caused damage to plaintiff's property located at the plant. Recently,  
12 defendants have disclosed that they are in the process of selling off (apparently to a third party  
13 competitor) equipment that contained and/or contains plaintiff's valuable intellectual property.

14 **PARTIES**

15 2. American Semiconductor, Inc. ("ASI") is an Idaho corporation with its principal place  
16 of business located in Boise, Idaho. ASI is a citizen and resident of Idaho. ASI is an award winning,  
17 on-shore U.S. semiconductor foundry that develops and commercializes technology. ASI's advanced  
18 technology research supports programs for agencies such as the U.S. Department of Defense, U.S.  
19 Department of Energy, and NASA.

20 3. California Assignments, LLC ("CAL") is a California limited liability company with its  
21 principal place of business located in Los Angeles, California. On information and belief, CAL does  
22 not have any members who are citizens of Idaho. CAL purports to be in the business of management  
23 consulting, and is in fact engaged in the business of assigning and liquidating the assets of insolvent  
24 companies.

25 4. Development Specialists, Inc. ("DSI") is an Illinois corporation with its principal place  
26 of business located in Chicago, Illinois and additional places of business located in San Francisco and  
27 Los Angeles, California. DSI does not list a place of business in Idaho. DSI purports to be in the  
28 business of management consulting and financial advisory services. DSI is also in the business of

1 assigning and liquidating the assets of insolvent businesses. On information and belief, DSI is the  
2 appointed manager of CAL, and DSI currently manages and controls the operations of CAL.

3 5. ASI is informed and believes and thereon alleges that each of the fictitiously named  
4 defendants is responsible in some manner for the occurrences and damages alleged herein. Among  
5 other things, ASI is informed and believes and thereon alleges that each of the fictitiously named  
6 defendants participated and/or conspired to participate in the acts complained of herein.

7 **JURISDICTION AND VENUE**

8 6. This Court has diversity jurisdiction over the claims asserted pursuant to 28 U.S.C. §  
9 1332. Plaintiff ASI is a citizen and resident of the State of Idaho. Defendant CAL is a citizen and  
10 resident of the State of California, and defendant DSI is a citizen and resident of the State of Illinois.  
11 The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

12 7. Venue in this district is proper under 28 U.S.C. § 1391. Among other things, the  
13 property that is the subject of this action is situated in this District, a substantial part of the events  
14 giving rise to the claims herein occurred in this District, defendants CAL and DSI are doing and  
15 transacting business within this District, and they or their agents may be found within this District.

16 **FACTUAL BACKGROUND**

17 8. Since 2005, SVTC Technologies, LLC and its predecessor (hereinafter, "SVTC") has  
18 acted as ASI's primary supplier of fabrication capacity. SVTC operated a fabrication plant located at  
19 3901 North First Street in San Jose, California (the "San Jose Facility"). Now defunct, SVTC was in  
20 the business of supporting customers in the development and fabrication of silicon-based solutions.

21 9. Since 2011, the condition and stability of SVTC's equipment degraded significantly as  
22 key maintenance, operations and engineering capabilities were diminished or eliminated. Increasingly,  
23 SVTC failed adequately to meet its contractual obligations relating to inventory movement, equipment  
24 support, intellectual property controls, on-site engineer support, and communication with ASI.

25 10. Over the years, ASI has paid millions of dollars to SVTC. In or around September 2012,  
26 however, SVTC began to make a number of unjustified demands for payment, including demands for  
27 payment involving activities that were never performed and services that were never provided because  
28 of SVTC's inability to meet its obligations.

*Defendants' Unjustified Refusals to Release*

*ASI's Property at the San Jose Facility*

11. On September 20, 2012, without warning, SVTC denied ASI access to the San Jose Facility (where a number of ASI engineers had offices), and further refused to give ASI access to its own tooling, materials and work in process. ASI was advised by independent sources that SVTC was expected to discontinue operations but that customers might soon be able to retrieve their property.

12. By suddenly denying ASI access to its own property, SVTC acted in breach of contractual provisions requiring proper notice and allowing for the orderly removal of ASI's materials, inventory and intellectual property. Plaintiff is informed and believes that SVTC acted in this fashion on the advice and/or with the knowledge and consent of CAL/DSI.

13. On or about October 1, 2012, ASI demanded the release of its tooling and materials still being held by SVTC. ASI also made an offer to settle its account with SVTC for \$4,948.50, accompanied by a very detailed accounting. Having learned of a pending assignment for the benefit of creditors, ASI also provided a copy of the foregoing materials to counsel for CAL/DSI.

14. On or prior to October 1, 2012, and at various other times, ASI demanded that its work in process and materials at the San Jose Facility be released immediately. ASI provided detailed information showing that the property being held at the San Jose Facility was worth nearly \$1 million.

15. In response, on or about October 5, 2012, SVTC represented that all of ASI's property was "secure" but advised that the property would be released only "upon payment of \$100K." This unjustified demand was made contrary to the parties' underlying agreement and even though ASI's account was undisputedly current as of the "lock out" date. ASI refused SVTC's unreasonable demand.

16. On October 10, 2012, before any assignment for the benefit of creditors, ASI sent a letter to SVTC addressing certain circumstances, claims and potential claims. Concurrently, and thereafter, the same issues were communicated to counsel for defendants CAL and DSI.

17. ASI is informed and believes that, on or about October 15, 2012, SVTC assigned all of its assets to defendant CAL, which assumed possession, custody and control of the San Jose Facility. Thereafter, defendants CAL and DSI (which manages and controls the operations of CAL) continued to refuse to release any of ASI's equipment and property.

1 18. For example, on October 18, 2012, while representing that ASI's property was secure,  
2 counsel for CAL and DSI refused to release any property unless and until ASI made a satisfactory  
3 offer to resolve its alleged debt to SVTC/CAL of "approximately \$140,000."

4 19. On October 23, 2012, through counsel, ASI sent a letter to CAL/DSI, a true and correct  
5 copy of which is attached hereto as Exhibit A. In the letter, ASI explained to CAL/DSI that:

- 6 a. ASI and its customers (not SVTC) had obtained and paid for all of the masks and  
7 wafers being held by CAL/DSI, which property was valued at nearly \$1 million;  
8 b. SVTC has no ownership, lien or security interest in the property at issue; and,  
9 c. There was no possible justification for refusing to release *nearly \$1 million* of property.

10 20. In addition, ASI advised defendants CAL and DSI that, in the preceding days, the  
11 unlawful conversion of ASI's property had resulted in *a direct loss of \$149,330* because an ASI  
12 customer had cancelled and demanded credits from two lots specifically identified in the letter.

13 21. On October 24, 2012, through counsel, defendants CAL and DSI advised that they  
14 would release four lots of ASI's work in process, including the two lots cancelled by ASI's customer.  
15 However, defendants refused to release any of ASI's other property, claiming that ASI owed SVTC  
16 "approximately \$140,000" and that CAL had an unspecified "warehouse lien" over the property.

17 22. On October 31, 2012, ASI learned from a third party that CAL would be conducting an  
18 auction of SVTC assets at 10:00 a.m. on the following day. Defendants never provided ASI with any  
19 notice of this auction. Immediately upon learning of this auction, ASI communicated with CAL and  
20 DSI, through counsel. A true and correct copy of ASI's letter dated October 31, 2012 is attached hereto  
21 as Exhibit B. As set forth in the letter, the purpose of ASI's correspondence was two-fold:

22 First, we want to place you ... on further notice that the inventory of "reticles" (masks)  
23 still being held at the San Jose [Facility] is the sole property of ASI, and not subject to  
any legitimate claim or interest by the Noticed Parties.

24 Second, we want to place the Noticed Parties on special notice that SVTC remains in  
25 (wrongful) possession of ASI intellectual property, including certain recipes and flows  
(the "IP"), which IP remains on SVTC's systems despite ASI's repeated demands therefor.

26 These two issues are the subject of ASI's claims in the instant action.  
27  
28

*The ASI Property Wrongfully Being Withheld by Defendants*

23. The masks (also known as reticles) used by ASI are pieces of high tolerance quartz with a chrome pattern on the surface, protected by a pellicle that includes a clear membrane over critical areas. As a general matter, in preparation for handling, storage or shipment outside a clean room, boxed reticles are placed sealed inside an ESD bag and then sealed again inside a plastic bag.

24. All of ASI's masks located at the San Jose Facility were procured and paid for by ASI directly from independent third parties. All of these masks are the property of ASI and/or its customers (e.g., the Department of Defense). Each of the masks at issue shows an ASI mask number printed in chrome and is directly traceable to ASI's mask vendor for proof of ownership.

25. Although an inventory of these masks was kept at SVTC for the convenience of the parties, SVTC did not perform any labor or furnish any materials used in the making of these masks or in altering, repairing or making any modifications thereto. Furthermore, the masks at issue are not covered by any warehouse receipt or storage agreement, and there have never been any charges assessed by SVTC or CAL/DSI for the storage or transportation of any of ASI's masks.

26. Accordingly, neither SVTC nor defendants has any ownership interest, lien or a security interest in ASI's masks. In particular, CAL/DSI cannot point to any "warehouse lien" in the masks.

27. ASI has never agreed to let SVTC or defendants CAL/DSI handle ASI's masks in any way. Nevertheless, ASI is informed and believes that some or all of its masks are no longer being kept in a proper clean room at the San Jose Facility. Evidently, shortly after CAL and DSI took control of the San Jose Facility, ASI's masks were "packed up into air tight boxes."

28. If ASI's masks were not handled by a qualified and trained engineer or were sealed using vacuum, they may have been damaged or contaminated, resulting in irreparable damage. Absent proof of proper boxing procedures, at a minimum, ASI will have to engage its mask supplier to inspect each and every mask, at considerable expense that can easily run over \$1,000 per mask.

29. Defendants CAL and DSI are currently in possession of approximately 122 ASI masks/reticles, which property is estimated to have a commercial value of more than \$750,000 and a replacement cost in excess of \$500,000.

1           30. In the letter of October 31, 2012 (Exh. A) and at other times, ASI has demanded that  
2 CAL and DSI return the inventory of ASI masks wrongfully being withheld, to no avail.

3           31. Defendants have refused even to allow ASI any access to the masks still being held at  
4 the San Jose Facility. Although Defendants have offered vague assurances that the masks are "secure",  
5 they have failed or refused to provide any details of the removal and packing procedures used.

6                           ***ASI's Intellectual Property Contained on Certain Equipment***  
7                           ***and Materials at the San Jose Facility***

8           32. As a matter of course, certain "recipes" and "flows" including trade secrets proprietary  
9 to ASI were stored securely on SVTC equipment and the remote support system (RSS) used at the San  
10 Jose Facility. Using the SVTC equipment, these recipes and flows were used to manufacture wafers for  
11 ASI. Such recipes and flows provide instructions and parameters to allow manufacturing pursuant to  
12 precise specifications.

13           33. The proprietary ASI recipes and flows stored on SVTC equipment and the RSS system  
14 at the San Jose Facility have been and continue to be regarded by ASI as proprietary works and trade  
15 secrets subject to a strict duty of confidence by SVTC. When SVTC/CAL/DSI unexpectedly closed the  
16 San Jose Facility to ASI engineers and denied them access to any equipment, these recipe files and  
17 process flows were active and many of them were not backed up on any systems outside the San Jose  
18 Facility. ASI's proprietary recipes and process flows at the San Jose Facility reflect more than ten  
19 years of development and a very substantial investment in ASI's intellectual property.

20           34. Furthermore, the ASI designs integrated as patterns on masks utilized in the SVTC  
21 processing equipment at the San Jose Facility have been and continue to be regarded by ASI as  
22 proprietary mask works and trade secrets subject to a strict duty of confidence by SVTC. When  
23 SVTC/CAL/DSI closed the San Jose Facility to ASI's engineers, these designs were active. ASI's  
24 designs on masks at the San Jose Facility reflect more than ten years of development and a very  
25 substantial investment in ASI's intellectual property.

26           35. ASI goes to great lengths to protect its confidential information, including the foregoing  
27 recipes and flows. ASI's confidential information is only disclosed outside of ASI when necessary, and  
28 then only pursuant to non-disclosure agreements and other obligations of confidentiality. ASI's

1 electronic communications and data are protected from unauthorized third party access by a firewall  
2 that prevents unauthorized inbound internet traffic from reaching ASI's computers.

3 36. As ASI has repeatedly explained to defendants CAL and DSI, the improper "removal"  
4 or other handling of its recipes and flows presents the potential for very significant harm. Indeed, the  
5 intellectual property at issue could be lost entirely. Among other things, improper attempts to transfer  
6 or copy recipes can result in unintentional modifications or destroy any utility for their reuse.

7 37. In the letter of October 31, 2012 (Exh. A) and at other times, ASI has demanded that  
8 defendants immediately release and return all of ASI's intellectual property, including the  
9 aforementioned proprietary recipes and flows, to no avail. To date, defendants have not released or  
10 returned any of ASI's trade secrets or intellectual property.

11 38. ASI's letter of October 31, 2012 offered to make ASI engineers immediately available  
12 to secure and transfer its intellectual property from SVTC's equipment and systems, working with  
13 agents for defendants. Although defendants offered vague assurances that ASI's intellectual property  
14 was "secure", they failed or refused to allow ASI any access to its own intellectual property.

15 *The November 1, 2012 Auction and Subsequent*

16 *Communications Between the Parties*

17 39. ASI's letter of October 31, 2012 (Exh. A) expressly demanded that defendants refrain  
18 from transferring any of ASI's trade secrets or other intellectual property, directly or indirectly, in  
19 connection with the auction of assets scheduled for the following day.

20 40. Prior to 10:00 a.m. on November 1, 2012, counsel for the parties exchanged email  
21 correspondence in which it was confirmed that, in fact, ASI has or had proprietary recipes in files  
22 located on numerous systems scheduled to be sold at auction later that day.

23 41. Through counsel, ASI received vague assurances that its intellectual property was not  
24 being transferred to third parties. Over the following two weeks, ASI continued to request, through  
25 counsel, that its engineers be allowed access to retrieve ASI's intellectual property. For a time, ASI  
26 was hopeful that a partial agreement could be worked out with respect to ASI's intellectual property, as  
27 it had been with respect to the four lots of work in process released on or about October 25, 2012.  
28



1           42.     However, counsel for defendants eventually stopped responding to inquiries from ASI's  
2 counsel, causing ASI to send a letter to defendants which, among other things, demanded that an  
3 immediate telephone conference be scheduled. A true and correct copy of ASI's letter dated November  
4 19, 2012 is attached hereto as Exhibit C.

5           43.     As a consequence, on November 20, 2012, the parties conducted a telephone  
6 conference, with clients and counsel participating, to discuss the situation.

7           44.     During this telephone conference, ASI again received general assurances regarding the  
8 condition of its property, including the vague representation that ASI's masks had not been damaged.

9           45.     However, during the telephone conference, ASI learned (for the first time), that (a) the  
10 assets that were the subject of a recent auction had been sold to a single buyer, (b) all or substantially  
11 all of those assets remained in DSI's possession, (c) unspecified steps were being taken to "remove"  
12 ASI's intellectual property from those assets, and, (d) apparently, the buyer of the assets had been  
13 asked to acknowledge that the assets being purchased might contain some "third party IP".

14          46.     During the telephone conference, CAL and DSI refused to release any of ASI's property  
15 unless and until ASI paid a sum of money in a specified "range" that reflected a substantial discount  
16 from the (entirely unjustified) amount originally demanded.

17          47.     During the telephone conference, ASI reminded CAL and DSI that it had provided  
18 detailed information regarding the continuing harm to ASI as a consequence of defendants' wrongful  
19 conduct. ASI also advised defendants that it could not reasonably negotiate any agreement to resolve  
20 defendants' demands for money unless and until ASI was allowed to inspect the condition of its masks  
21 and intellectual property. Defendants were very reluctant even to discuss ASI's claims and damages.

22          48.     Immediately after the foregoing conference, through counsel, ASI sent defendants  
23 certain email correspondence proposing a protocol that would allow the parties to evaluate the  
24 condition of ASI's property, as a means of seeking to resolve the instant dispute. A true and correct  
25 copy of this email dated November 21, 2012, with attachment, is appended hereto as Exhibit D.

26          49.     Responding the same day, counsel for defendants renewed its demand for money and  
27 failed to release or allow any access to ASI's property at the San Jose Facility. Counsel for defendants  
28 promised to consider ASI's specific proposal and to respond in writing the following week.

50. Shortly before 5:00 p.m. on Friday, November 30, 2012, counsel for defendants CAL and DSI responded in an e-mail. Defendants did not discuss or even address the specific protocol proposed by ASI on November 21, 2012. Instead, defendants demanded that ASI agree to pay an even smaller fraction of the amount originally demanded *and* to execute a "general mutual release," all as a *condition* of being allowed to inspect and take possession of its own reticles (masks) and certain "electronic storage devices" holding "ASI related IP." Based on the email, it appears that defendants are in the process of attempting to move ASI's intellectual property to "separate" storage devices.

51. The foregoing email asserted vaguely that, under “California statutory law,” CAL/DSI had a “statutory lien” against “the wafers, reticles and IP” being withheld from ASI, “in each case to secure ASI’s outstanding obligation.” Counsel for ASI replied immediately and demanded (yet again) that CAL/DSI identify any such statute. To date, defendants have failed or refused to respond.

**FIRST CLAIM FOR RELIEF**

## Conversion

52. ASI reasserts and incorporates herein by reference the allegations contained in paragraphs 1 through 51 above, inclusive.

53. The personal and intellectual property referred to above was knowingly obtained, retained and/or transferred by defendants without any consent from ASI.

54. Defendants have converted to their own use, transferred and/or destroyed ASI's property and have failed and refused, and continue to fail and refuse, to return said property.

55. As a direct and proximate result of the foregoing conversion, ASI has sustained damages and continues to sustain damages on a day-to-day basis, in an amount to be determined according to proof at trial.

56. Defendants have acted intentionally, willfully, recklessly, and maliciously in violating ASI's rights. Accordingly, ASI is entitled to an award of punitive damages against defendants.

## SECOND CLAIM FOR RELIEF

## Misappropriation of Trade Secrets

57. ASI reasserts and incorporates herein by reference the allegations contained in paragraphs 1 through 56 above, inclusive.

1       58. ASI's confidential and proprietary business and trade secret information includes  
2 recipes and flows that are not generally known to the public or to other persons who can obtain  
3 economic value from its disclosure or use.

4       59. ASI's confidential and proprietary business and trade secret information is the subject  
5 of reasonable efforts by ASI to maintain their secrecy, and the information derives independent  
6 economic value from not being generally known.

7       60. All or a portion of the recipes and flows comprising ASI's confidential and proprietary  
8 business and trade secret information constitute "trade secrets" under California and Idaho law.

9       61. As the assignee of SVTC, CAL (and DSI) obtained access to ASI's trade secret  
10 information. As explained above, defendants have misappropriated, transferred and/or destroyed ASI's  
11 trade secrets through improper means, despite ASI's repeated demands to the contrary.

12       62. Because of the above-alleged acts and wrongful conduct of the defendants, ASI has  
13 been damaged and has suffered irreparable harm, and is likely to suffer additional irreparable harm.  
14 The amount of this irreparable harm is difficult to ascertain, leaving ASI without an adequate remedy  
15 at law. Indeed, if ASI's confidential information is disclosed to CAL's buyer and/or others who are  
16 competitors, it could allow other businesses to gain a competitive advantage that they would not  
17 otherwise be entitled to obtain, which would detrimentally affect ASI's prospects and market share.

18       63. ASI is also entitled to recover from defendants for the actual damages sustained as a  
19 result of defendants' wrongful acts as described hereinabove, in an amount to be determined according  
20 to proof at trial.

21       64. ASI is further entitled to recover from defendants the gains, profits, advantages, and  
22 unjust enrichment that they have obtained as a result of defendants' wrongful acts as described  
23 hereinabove, in an amount to be determined according to proof at trial.

24       65. Defendants have acted intentionally, willfully, recklessly, and maliciously in violating  
25 ASI's rights. Accordingly, ASI is entitled to an award of punitive damages against defendants.

**THIRD CLAIM FOR RELIEF**

**Injunctive Relief**

66. ASI reasserts and incorporates herein by reference the allegations contained in paragraphs 1 through 65 above, inclusive.

67. Based on the facts and claims set forth above, ASI is entitled to temporary and permanent injunctive relief against defendants.

68. The actions of defendants will cause permanent and irreparable harm to ASI that is not adequately compensable by money damages.

69. Defendants and their agents and assigns, and those working in concert with them, should be enjoined, *inter alia*: (a) from moving, transferring or continuing to exercise unlawful possession over ASI's personal property, and (b) from disclosing, using, transferring, deleting or destroying ASI's intellectual property.

**PRAYER FOR RELIEF**

WHEREFORE, ASI respectfully prays for judgment against defendants, on all claims for relief:

1. For damages, according to proof;
2. For compensatory damages, according to proof;
3. For interest thereon at the legal rate;
4. For punitive damages for defendant's willful and malicious conduct;
5. For temporary and permanent injunctive relief;
6. For attorneys' fees and cost of suit, according to law; and,
7. For such other and further relief as the Court deems just and proper.

DATED this 4<sup>th</sup> day of December, 2012.

PARSONS BEHLE & LATIMER

By

  
John N. Zarian  
Attorneys for Plaintiff  
American Semiconductor, Inc.

**DEMAND FOR JURY TRIAL**

American Semiconductor, Inc. hereby demands a trial by jury on all issues herein.

DATED this 4<sup>th</sup> day of December, 2012.

PARSONS BEHLE & LATIMER

By

  
John N. Zarian  
Attorneys for Plaintiff  
American Semiconductor, Inc.

4832-2977-3586.1

## Exhibit A



960 Broadway Avenue  
Suite 250  
Boise, ID 83706  
Telephone 208.562.4900  
Facsimile 208.562.4901

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Boise • Las Vegas • Reno • Salt Lake City • Spokane • Washington, D.C.

October 23, 2012

**VIA E-MAIL**

[mgoldstein@stutman.com](mailto:mgoldstein@stutman.com)

Michael H. Goldstein  
Stutman Treister & Glatt  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, California 90067

Re: *American Semiconductor, Inc.*

Dear Michael:

This firm represents the interests of American Semiconductor, Inc. ("ASI"). As reflected in my letter dated October 10, 2012 and further emphasized during our recent telephone conference on October 18, 2012, ASI has demanded that your client, Development Specialists, Inc. ("DSI"), as assignee of SVTC Technologies, LLC ("SVTC"), release the property currently being held at the fabrication facility in San Jose, California (the "Fab").

As previously explained, unlike many SVTC customers, ASI obtained and paid for its own masks (reticles) and wafers, procured from independent third parties. The large inventory of ASI masks and wafers presently held at the Fab is valued at approximately \$923,000. It is undisputed that these masks and wafers are ASI's property and/or the property of its customers (including government agencies), and it is further understood that SVTC has no ownership or security interest in the property at issue – nor does Wells Fargo. In addition, it is beyond dispute that there is no possible justification for DSI refusing to release *nearly \$1 million* of ASI's property.

Even so, DSI has failed or refused to return the property in question – demanding instead that ASI agree to pay an uncertain sum of money on a disputed contractual claim.

Presently, we write to inform you that the unlawful conversion of ASI's property by SVTC and DSI has resulted, in the past few days, in an additional **\$149,330** in economic damages to ASI. In particular, earlier today, ASI's customer cancelled and demanded credits from ASI with respect to Lot #12080907 (\$90,950.00) and Lot #12082404 (\$58,380.00).

October 23, 2012

Page Two

These damages were caused directly by the willful interruption of ASI's business, and could have been avoided but for SVTC's and DSI's ongoing wrongful conduct.

The unlawful failure to surrender nearly \$1 million of property has caused significant economic harm to ASI. In addition to the aforementioned credits on the loss of two sales, ASI has been forced to purchase a mask to duplicate a reticle being wrongfully held at the Fab, at a cost of approximately \$3,500. In addition, ASI has incurred at least \$24,233 in lost profits on revenue that it had to forego with respect to Lot #120703004. These damages – of which DSI is now placed on special notice – continue to grow, to ASI's severe prejudice.

Moreover, as previously communicated, the failure to surrender nearly \$1 million of ASI's property is in willful disregard of federal regulations. ASI's masks and wafers must be secured in an ITAR (International Traffic in Arms Regulations) compliant facility. As recently admitted by SVTC's counsel, the Fab "has never been and is not ITAR compliant."

Under the circumstances, we once again renew our demand that DSI **immediately** release all of the ASI property that has been converted and is unlawfully being held at the Fab. Among other things, we demand that your client(s) immediately release Lot nos. 12073004, 12082404, 12080907, and 12050941, including all associated masks. The failure to release these four lots (valued at approximately \$154,098) has been and remains particularly likely to result in immediate economic harm to ASI. While we do not concede that DSI has any legal right to continue to convert ASI's other property, the immediate release of these four lots could begin to mitigate (but will not end) ASI's continuing and unnecessary losses and claims against SVTC and/or DSI.

\* \* \* \* \*

Given the urgency of this situation, we request that you respond to this letter by the close of business on Wednesday, October 24, 2012.

Very truly yours,

Parsons Behle & Latimer



John N. Zarian

cc: J. Thomas Beckett

Client

4829-2761-4481.1

000825



## Exhibit B



960 Broadway Avenue  
Suite 250  
Boise, ID 83706  
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A PROFESSIONAL  
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Boise • Las Vegas • Reno • Salt Lake City • Spokane • Washington, D.C.

October 31, 2012

**VIA E-MAIL**

mgoldstein@stutman.com

Michael H. Goldstein  
Stutman Treister & Glatt  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, California 90067

Re: *American Semiconductor, Inc. / Auction of SVTC Assets*

Dear Michael:

Thank you for your letter of October 24, responding to my letter of October 23, 2012. This letter follows up on that exchange of correspondence and the ongoing dispute between our client, American Semiconductor, Inc. ("ASI"), and your client, Development Specialists, Inc. ("DSI"), as assignee of SVTC Technologies, LLC ("SVTC"), concerning certain property currently being held at the fabrication facility in San Jose, California (the "San Jose Fab"). As you know, ASI also holds title, rights and interests to certain property in the possession and control of SVTC's fabrication facility in Austin, Texas (the "Austin Fab").

This letter also addresses the fact, learned earlier today, that California Assignments, LLC ("Assignee") is conducting an auction – subject to the approval of Wells Fargo Bank (the "Bank") – of certain SVTC assets at 10:00 a.m. on November 1, 2012 (tomorrow), at your law firm's offices in Los Angeles. (Remarkably, neither ASI nor its counsel received any notice of this auction.) Please accept this correspondence and the notice provided hereby (and through our prior communications) on behalf of your firm, Assignee and the Bank.

As a final threshold matter, thank you for causing your client to release Lot Nos. 12073004, 12082404, 12080907 and 12050941. Those lots were retrieved by ASI late last week and, although our inspection is ongoing, they appear to be in good condition. As noted in our prior correspondence, the refusal to release these lots in a timely fashion has already caused substantial financial harm to ASI. However, ASI is working hard to mitigate those losses.

000827

October 31, 2012

Page Two

The purpose of this letter, then, is two-fold. First, we want to place you and DSI, SVTC, Assignee, the Bank and Tezzaron Semiconductor Corp. (the "Noticed Parties") on further notice that the inventory of "reticles" (masks) still being held at the San Jose Fab is the sole property of ASI, and not subject to any legitimate claim or interest by the Noticed Parties.

Second, we want to place the Noticed Parties on special notice that SVTC remains in (wrongful) possession of ASI intellectual property, including certain recipes and flows (the "IP"), which IP remains on SVTC's systems despite ASI's repeated demands therefor.

Neither of these groups of assets may be lawfully destroyed or sold at auction tomorrow.

### **1. The Inventory of Reticles (Masks) Owned by ASI**

As we have repeatedly advised you, unlike many SVTC customers, ASI obtained its *own* reticles, procured from independent third parties. They belong to ASI and/or its customers.

Reticles are pieces of high tolerance quartz with a chrome pattern on the surface, protected by a pellicle that includes a clear membrane over critical areas. (See Fig. 1.) Viewed closely, each of the reticles at issue shows an ASI reticle number printed in chrome on the reticle and traceable to ASI's mask vendor for proof of ownership. (See Fig. 2.) As a general matter, in preparation for handling, storage or shipment outside a cleanroom, boxed reticles are placed sealed inside an ESD bag and then sealed again inside a plastic bag.

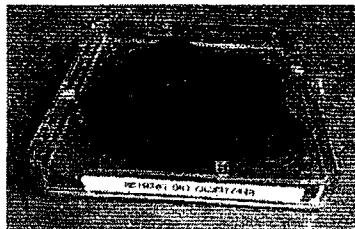


Figure 1



Figure 2

These reticles are the property of ASI and/or the property of its customers (*e.g.*, the Department of Defense), and *not* the property of any of the Noticed Parties. Although an inventory of reticles was kept at SVTC for the convenience of the parties, SVTC did not perform any labor or furnish any materials used in the making of these reticles or in altering, repairing or making any modifications thereto. Furthermore, the reticles at issue are not covered by any warehouse receipt or storage agreement, and there have never been any charges assessed by SVTC for the storage or transportation of any of ASI's reticles.

Under the circumstances, none of the Noticed Parties has either an ownership interest or a security interest in the foregoing property, nor does the Assignee have any warehouse lien thereon. Even so, the Noticed Parties have refused to release the reticles owned by ASI.

October 31, 2012

Page Three

Indeed, even though ASI has never agreed to let SVTC or any of the Noticed Parties handle the reticles in any way, it appears that ASI's reticles are no longer being kept in a cleanroom. Apparently, shortly after DSI took control of the San Jose Fab, ASI's reticles were "packed up into air tight boxes." If the reticles were not handled by a qualified and trained engineer or were sealed using vacuum, they may have been damaged or contaminated, resulting in irreparable damage. Unless DSI can provide proof of box quality and boxing procedures, at a minimum, ASI will have to engage its mask supplier to inspect each and every mask, at considerable expense that can easily run over \$1,000 per reticle.

Once again, we demand that SVTC and each of the Noticed Parties immediately release and return the reticles owned by ASI and/or its customers. (For your convenience, a list of ASI's reticles is attached hereto.)

Furthermore, we demand that the Noticed Parties refrain from including any of ASI's reticles in the auction of assets scheduled for tomorrow.

## **2. ASI's Intellectual Property, Including Recipes and Flows**

As previously explained, we are very concerned that SVTC appears to be selling fabrication services using at least one proprietary ASI recipe. We also understand that SVTC has received and continues to receive approximately \$150 per wafer for this recipe, in willful disregard of ASI's intellectual property rights. Furthermore, we understand that SVTC has transferred ASI's proprietary copper technology to one or more of the other Noticed Parties.

More generally, we are extremely concerned about the proprietary ASI recipes and flows that had been stored (and presumably remain stored) on-site on SVTC equipment and the RSS system, at both the San Jose Fab and the Austin Fab. ASI regards this IP as trade secrets subject to a strict duty of confidence and confidentiality by the Noticed Parties.

Presently, we demand that the Noticed Parties immediately release and return all of ASI's IP, including the aforementioned recipes and flows. ASI is prepared to make its engineers available immediately to delete, download and/or transfer its IP from SVTC's equipment and systems, working with agents for the Noticed Parties, if you prefer. (We hope and expect that ASI's IP has not been deleted or otherwise destroyed already by the Noticed Parties.) ASI is also prepared to review and discuss the list of assets to be auctioned tomorrow to determine whether and which SVTC assets contain or may contain ASI's IP.

Thus, we expressly demand that the Noticed Parties refrain from transferring any of ASI's IP, directly or indirectly, in connection with the auction of assets scheduled for tomorrow.

\* \* \* \* \*

October 31, 2012  
Page Four

Please feel free to give me or Tom Beckett a call to discuss the foregoing situation at your earliest possible convenience.

Very truly yours,

Parsons Behle & Latimer

A handwritten signature in black ink, appearing to read "John N. Zarian", written in a cursive style.

John N. Zarian

cc: J. Thomas Beckett  
Client

4815-0627-8417.1

Last Update:  
10/23/2012

Current Location	Mask Set					Status	Quantity	Value
	Mask Set	Plate #	Mag	Wave				
SJO	TCFF02C	01A	5X	365	WIP	1	\$6,500	
SJO	TCFF02C	02A	5X	365	WIP	1	\$6,500	
SJO	TCFF02C	03B	5X	365	WIP	1	\$5,400	
SJO	TCMR01	01A	4X	248	WIP	1	\$6,500	
SJO	TCFF03A	01A	4X	248	WIP	1	\$6,500	
SJO	TCFF03A	03A	4X	248	WIP	1	\$5,400	
SJO	TCFF03A	04A	5X	365	WIP	1	\$6,500	
SJO	TCFF03A	05A	5X	365	WIP	1	\$6,500	
SJO	TCFF03A	02A	4X	248	WIP	1	\$6,500	
SJO	PTFF02A	01A	4X	248	WIP	1	\$6,500	
SJO	PTFF02A	02A	4X	248	WIP	1	\$6,500	
SJO	PTFF02A	03A	4X	248	WIP	1	\$6,500	
SJO	PTFF02A	04A	5X	365	WIP	1	\$6,500	
SJO	PTFF01A	01A	5X	365	WIP	1	\$6,500	
SJO	PTFF01A	02A	4X	248	WIP	1	\$6,500	
SJO	PTFF01A	03A	4X	248	WIP	1	\$6,500	
SJO	PTFF01A	04A	4X	248	WIP	1	\$6,500	
SJO	PTFF01A	05A	4X	248	WIP	1	\$6,500	
SJO	TCFF05A	04A	5X	365	WIP	1	\$6,500	
SJO	TCFF04A	01A	4X	248	WIP	1	\$6,500	
SJO	TCFF04A	02A	4X	248	WIP	1	\$6,500	
SJO	TCFF04A	04A	5X	365	WIP	1	\$6,500	
SJO	PTFF07A	01A	4X	248	WIP	1	\$6,500	
SJO	PTFF07A	02A	4X	248	WIP	1	\$6,500	
SJO	PTFF07A	03A	4X	248	WIP	1	\$6,500	
SJO	PTFF07A	04A	4X	248	WIP	1	\$6,500	
SJO	PTFF07A	05A	4X	248	WIP	1	\$6,500	
SJO	PTFF07A	06A	4X	248	WIP	1	\$6,500	
SJO	TCFF09A	01A	4X	248	WIP	1	\$6,500	
SJO	TCFF09A	02A	4X	248	WIP	1	\$6,500	
SJO	TCFF09A	03A	4X	248	WIP	1	\$5,400	
SJO	TCFF09A	04A	4X	248	WIP	1	\$6,500	
SJO	TCFF09A	05A	4X	248	WIP	1	\$6,500	
SJO	TCFF09A	06A	5X	365	WIP	1	\$6,500	
SJO	TCFD10A	03A	5X	365	WIP	1	\$6,500	
SJO	PTBS11A	01A	5X	365	WIP	1	\$6,500	
SJO	PTBS11A	02A	4X	248	WIP	1	\$6,500	
SJO	PTBS11A	03A	4X	248	WIP	1	\$6,500	
SJO	PTBS11A	04A	5X	365	WIP	1	\$6,500	
SJO	PTBS11A	05A	4X	248	WIP	1	\$6,500	
SJO	PTBS11A	06A	4X	248	WIP	1	\$6,500	
SJO	PTBS11A	07A	5X	365	WIP	1	\$5,400	
SJO	TCFF09B	01B	4X	248	WIP	1	\$6,500	
SJO	TCFF09B	02B	4X	248	WIP	1	\$6,500	
SJO	TCFF09B	03B	4X	248	WIP	1	\$5,400	
SJO	PTFF07B	05B	4X	248	WIP	1	\$5,400	
SJO	TCFD14A	01A	4X	248	WIP	1	\$6,500	
SJO	TCFD14A	02A	4X	248	WIP	1	\$6,500	
SJO	TCFD14A	03A	5X	365	WIP	1	\$6,500	
SJO	PTFF07C	03C	4X	248	WIP	1	\$5,400	
SJO	TCFF15A	01A	4X	248	WIP	1	\$5,400	
SJO	TCFF15A	02A	4X	248	WIP	1	\$6,500	
SJO	TCFF15A	03A	4X	248	WIP	1	\$6,500	
SJO	TCFF15A	04A	4X	248	WIP	1	\$6,500	
SJO	TCFF15A	05A	5X	365	WIP	1	\$5,400	
SJO	TCFF16A	02A	4X	248	WIP	1	\$5,400	
SJO	TCFF16A	04A	4X	248	WIP	1	\$6,500	
SJO	TCFF16A	01A	4X	248	WIP	1	\$6,500	
SJO	TCFF16A	03A	4X	248	WIP	1	\$6,500	
SJO	TCFF16A	05A	5X	365	WIP	1	\$6,500	
SJO	TCFF17A	01A	4X	248	WIP	1	\$6,500	
SJO	TCFF17A	02A	4X	248	WIP	1	\$5,400	
SJO	TCFF17A	03A	4X	248	WIP	1	\$6,500	
SJO	TCFF17A	04A	4X	248	WIP	1	\$6,500	

Last Update:  
10/23/2012

Current Location	Mask Set						
	Mask Set	Plate #	Mag	Wave	Status	Quantity	Value
SJO	TCFF17A	05A	4X	248	WIP	1	\$6,500
SJO	TCFF17A	06A	5X	365	WIP	1	\$6,500
SJO	TCFF17B	07A	4X	193	WIP	1	\$6,500
SJO	TCFF17B	08A	4X	193	WIP	1	\$6,500
SJO	PTNA18A	01A	4X	248	WIP	1	\$6,500
SJO	PTNA18A	02A	4X	248	WIP	1	\$5,400
SJO	PTNA18A	03A	4X	248	WIP	1	\$6,500
SJO	PTNA18A	04A	4X	248	WIP	1	\$6,600
SJO	PTNA18A	06A	5X	365	WIP	1	\$6,500
SJO	PTNA18A	05A	4X	248	WIP	1	\$6,500
SJO	TCFF19A	06A	5X	365	WIP	1	\$6,500
SJO	TCFF19A	01A	4X	248	WIP	1	\$6,500
SJO	TCFF19A	02A	4X	248	WIP	1	\$6,500
SJO	TCFF19A	03A	4X	248	WIP	1	\$6,500
SJO	TCBK20A	01A	4X	193	WIP	1	\$6,500
SJO	TCBK20A	02A	4X	193	WIP	1	\$5,400
SJO	TCBK20A	03A	4X	193	WIP	1	\$6,500
SJO	PTNA18B	07B	4X	248	WIP	1	\$6,500
SJO	TCFF19A	05A	4X	248	WIP	1	\$5,400
SJO	TCFF19B	07B	4X	193	WIP	1	\$6,500
SJO	TCFF19B	08B	4X	193	WIP	1	\$6,500
SJO	TCBK21A	01A	4X	193	WIP	1	\$6,500
SJO	TCBK21A	02A	4X	193	WIP	1	\$6,500
SJO	TCBK21B	04B	4X	193	WIP	1	\$5,400
SJO	TCBK21B	05B	4X	193	WIP	1	\$6,500
SJO	TCBK21C	06C	4X	193	WIP	1	\$6,500
SJO	TCFF23A	06A	5X	365	WIP	1	\$6,500
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SJO	TCFF23A	01A	4X	248	WIP	1	\$6,500
SJO	TCFF23A	02A	4X	248	WIP	1	\$6,500
SJO	TCFF23A	03A	4X	248	WIP	1	\$6,500
SJO	TCFD22A	06A	5X	365	WIP	1	\$5,400
SJO	TCFD22A	03A	4X	248	WIP	1	\$6,500
SJO	TCFD22A	04A	4X	248	WIP	1	\$6,500
SJO	TCFD22A	02A	4X	248	WIP	1	\$6,500
SJO	TCFD22A	01A	4X	248	WIP	1	\$6,500
SJO	TCFD22A	05A	4X	248	WIP	1	\$6,500
SJO	TCCA24A	01A	4X	248	WIP	1	\$6,500
SJO	TCCA24A	02A	4X	248	WIP	1	\$6,500
SJO	PTCA25A	01A	4X	248	WIP	1	\$6,500
SJO	PTCA26A	01A	4X	248	WIP	1	\$6,500
SJO	TCCA27A	01A	4X	248	WIP	1	\$6,500
SJO	TCCA27A	02A	4X	248	WIP	1	\$6,500
SJO	PTCA25B	01B	4X	248	WIP	1	\$6,500
SJO	PTCA26B	01B	4X	248	WIP	1	\$6,500
SJO	PTCA25C	01C	4X	248	WIP	1	\$6,500
SJO	PTCA26C	01C	4X	248	WIP	1	\$6,500
SJO	PTFF29A	01A	4X	248	WIP	1	\$6,500
SJO	PTFF29A	02A	4X	248	WIP	1	\$6,500
SJO	PTFF29A	03A	4X	248	WIP	1	\$6,500
SJO	PTCA28A	01A	4X	248	WIP	1	\$6,500
SJO	PTCA28B	01B	4X	248	WIP	1	\$6,500
SJO	PTCA31A	01A	4X	248	WIP	1	\$6,500
SJO	PTCA31B	01B	4X	248	WIP	1	\$6,500
SJO	PTCA31A	02A	4X	248	WIP	1	\$6,500
SJO	PTCA31A	03A	4X	248	WIP	1	\$6,500
SJO	PTCA31A	04A	4X	248	WIP	1	\$6,500
Total						122	\$775,400

## Exhibit C





960 Broadway Avenue  
Suite 250  
Boise, ID 83706  
Telephone 208.562.4900  
Facsimile 208.562.4901

A PROFESSIONAL  
LAW CORPORATION

John N. Zarian  
Attorney at Law

Direct Dial (208) 562-4902  
E-Mail JZarian@ParsonsBehle.com

Boise • Las Vegas • Reno • Salt Lake City • Spokane • Washington, D.C.

November 19, 2012

**VIA E-MAIL**

*mgoldstein@stutman.com*

Michael H. Goldstein  
Stutman Treister & Glatt  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, California 90067

Re: *American Semiconductor, Inc.*

Dear Michael:

As you know, we have repeatedly demanded that Development Specialists, Inc. ("DSI") immediately release, destroy or return certain intellectual property owned by American Semiconductor, Inc. ("ASI"), including recipes and flows located in San Jose on assets and equipment specifically identified in prior communications. Nevertheless, as of this date, no IP has been returned and ASI's engineers have been repeatedly denied access to retrieve ASI's IP. Moreover, it appears to us that you are no longer responding to our inquiries.

In addition, DSI continues to refuse to return a specifically identified inventory of reticles owned in its entirety by ASI and/or its customers, even though DSI has no legitimate security interest or lien in said property. As previously advised, there are indications that ASI's property may have been damaged. Further, we have now received reports that DSI may be removing some or all of ASI's property and equipment from the San Jose facility.

The current situation is unacceptable and certain to result in litigation unless this dispute can be resolved immediately to the parties' satisfaction. As your clients' files will confirm, ASI has been trying to work through these issues since June (and even prior thereto), including our contacts with you in recent months. At this point, we need an indication that your client is willing to engage in a good faith attempt to resolve this dispute informally.

To that end, please let us know whether you and/or your client are available for an immediate telephone conference or meeting to discuss the pending issues in dispute. We would like to schedule the conference or meeting for some time tomorrow or Wednesday.

November 19, 2012  
Page Two

Thank you for your continued courtesy and cooperation in this matter.

Very truly yours,

Parsons Behle & Latimer

A handwritten signature in black ink, appearing to read "John N. Zarian", written in a cursive style.

John N. Zarian

cc: J. Thomas Beckett  
Client

4815-0627-8417.1

## Exhibit D

**From:** John N. Zarian  
**To:** Goldstein, Michael H.  
**Cc:** J. Thomas Beckett; Cathy Pontak  
**Subject:** American Semiconductor, Inc.  
**Date:** Wednesday, November 21, 2012 2:44:06 PM  
**Attachments:** Verification Process.pdf  
**Importance:** High

---

Michael,

Thank you for helping me arrange yesterday's telephone conference. While recognizing that we are running out of time for an informal resolution, we were encouraged by the dialogue and remain hopeful that the parties will be able to work through the current impasse. We also appreciate DSI's proposal to resolve this dispute in exchange for the payment of a specific sum of money by ASI (\$50K - \$75K).

#### **DSI's Representations and Assurances**

During our telephone call, ASI received certain representations and assurances. We were advised that the assets that were the subject of a recent auction (and our email exchange) have been sold to a single buyer, that many or all of the assets remain in DSI's possession, that steps are being taken to remove ASI's IP from the assets, and that the buyer has been asked to acknowledge the assets being purchased may contain "third party IP". DSI also represented to us that the reticles that have been the subject of our ongoing correspondence have not been damaged and are being stored in a secure manner.

#### **Clarification of ASI's Position**

To be clear, ASI has never authorized DSI to review, access, hold, transfer or dispose of any of ASI's IP. Although it was represented yesterday that the recipe files, process flows and other IP at issue are being "saved" by DSI in some fashion, we cannot begin to understand why ASI is not being involved directly in this process – and we are very concerned about the potential for significant harm to ASI through the permanent loss of its IP through improper handling. (Among other things, improper attempts to transfer or copy the recipes can destroy their utility for reuse or result in unintentional recipe modifications.) These are not trivial matters. When SVTC/DSI unexpectedly closed the San Jose facility to ASI engineers and denied them access to any equipment, extensive recipe files and process flows were active. These files reflect more than 10 years of ASI's proprietary recipe and process development.

Furthermore, as to ASI's reticles, we remain concerned about the potential for ongoing property damage (as well as the ongoing loss of ASI business because of DSI's refusal to return ASI's property). When SVTC/DSI closed the San Jose facility to ASI engineers, more than 100 reticles were in use in the SVTC reticle stocker and at least two reticles were in SVTC shipping and receiving. DSI has reported that ASI's reticles have been removed from the stocker, while representing that the reticles are properly bagged and stored. As we have previously explained, the proper storage of these reticles is critical to their ongoing utility (and the avoidance of very significant losses) to ASI.

In addition, and as a general matter, we have still not received any statutory basis for the ongoing failure to return ASI-owned property. It is undisputed that DSI/SVTC has never modified, added any work or value to, or been asked or paid to store any of the ASI-owned property at issue; moreover, the value of ASI's property far exceeds DSI's disputed and non-liquidated demand for money.

**ASI's Desire to Respond to the Proposal Made by DSI**

All of that said, we would like to respond to DSI's recent proposal with a specific counter-offer.

As you will recall, at the beginning of our telephone conference yesterday, we proposed that DSI immediately return ASI's property so as to allow the parties to resolve their claims. As we explained, one of the reasons for this demand is that ASI's damages continue to grow. Although you characterized this approach as a demand for "capitulation," we asked you to recognize that ASI is working in a *vacuum* of information – without access to its own property and without any information concerning its current condition. The asymmetrical availability of information very significantly impedes our dialogue.

To be sure, DSI's (non-technical) representations and assurances yesterday were a positive development. However, ASI has had no opportunity whatsoever to confirm DSI's assertions.

Having reflected on the matter, we believe that confirming DSI's representations and assurances about ASI property is a necessary and appropriate step to resolving this dispute. In particular, the confirmation of DSI's assertions is necessary to allow ASI to make an informed counter-offer to your proposal.

**ASI's Request to Confirm DSI's Representations and Assurances**

Accordingly, we request that DSI immediately agree to give ASI supervised access to the San Jose facility, for the express purpose of confirming the representations and assurances given by DSI yesterday.

The process we have in mind is straightforward. It would allow ASI to verify that the procedures being used by DSI are not (inadvertently) destroying or modifying ASI's IP. It would also allow ASI to determine that DSI's storage and handling procedures are preserving the viability of ASI's reticles.

We anticipate that this verification work can be completed in approximately one week by a team that includes a couple of DSI engineers and two or three ASI engineers. Under the circumstances, we believe that it is also necessary to include an engineer from the buyer to participate in the process.

Indeed, so that we may better understand the parameters and potential issues involved, please disclose the identity of DSI's buyer and also disclose the provisions of the agreement between the buyer and DSI that directly relate to the buyer's obligations with respect to ASI's IP.

Of course, this verification work needs to be completed before any of the assets containing ASI's IP

can be safely and lawfully removed from the San Jose facility and transferred to third parties. We are prepared to cooperate with you immediately to conduct this work as quickly and efficiently as possible.

To expedite this effort, we have prepared the attached document describing the verification process we have in mind. We hope and expect that you will find it to be both reasonable and useful.

#### Follow Up

Yesterday, it was implied that all of the assets at issue remain in DSI's possession, but suggested that a transfer of possession to the buyer is contemplated in very short order. Under those circumstances, time appears to be of the essence and we request that DSI respond to our proposal within a time frame that allows the verification process to be completed before any equipment is released to third parties.

Please contact me or Tom Beckett if you have any questions or would like to discuss the foregoing.

Best regards,  
John

---

John N. Zarian   
Attorney at Law  
Parsons Behle & Latimer  
 960 Broadway Avenue, Suite 250  
Boise, ID 83706  
Direct Dial 208.562.4902  
Facsimile 208.562.4901  
[www.ParsonsBehle.com](http://www.ParsonsBehle.com)

---

CONFIDENTIALITY NOTICE: This electronic mail message and any attachment are confidential and may also contain privileged attorney-client information or work product. The message is intended only for the use of the addressee. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you may not use, distribute, or copy this communication. If you have received the message in error, please immediately notify us by reply electronic mail or by telephone at 801.532.1234, and delete this original message.

Thank you, Parsons Behle & Latimer.

---

## VERIFICATION PROCESS

### 1. The reticles must be inventoried. (Reticle Inventory Procedure)

Reticles are precision tooling that are highly sensitive to handling and to their environment. Reticles contain design IP and storage must accommodate IP control as well as material storage requirements.

- a. **Initial count** – Bagged reticles must be compared to the ASI inventory list. Loss of a reticle is a loss of design IP as well as a loss of an expensive physical asset. Physical presence of the bagged reticles must be verified by an ASI engineer. Explanation must be provided by DSI for any missing reticles.
- b. **Bag Verification** – Reticles inside the bags must be verified. Just because a bag is labeled, it does not prove what is actually in the bag. Each reticle is labeled in chrome on the reticle surface. Reticles must be verified in a class 10 or better cleanroom environment. Verification must be done by a DSI engineer under the observation of an ASI engineer. (If the reticle is damaged or missing, it must be clear who was responsible.) Any damage such as broken or contaminated pellicle, scratched chrome or damaged quartz must be noted. Following verification, reticles must be re-bagged in the approved manner. Sealed bags will be labeled with an ASI seal to insure that they are not disturbed during storage. **NOTE: Visual verification of reticle condition is not adequate to verify whether or not the reticle is useable. Reticle viability will require vendor inspection prior to use.**
- c. **Storage Location** – Reticles must be stored in secure location. Reticles and their inherent design IP must be safely and securely stored. Following bag verification, all reticles must be stored in a secure location. The secure location must be verified as being under lock and key and supported with a procedure that verifies who has access. The storage location must also provide a stable temperature and environment. The ASI engineer will verify that all reticles have been secured in the designated storage location.

### 2. Recipe and Process flow IP verification

- a. Every fab tool being sold by DSI has the capability for containing ASI IP. IP is on individual tools as data files. The file format is often specific to the individual type of equipment. In some cases if the file is opened outside of the system, it is no longer capable of being run in the system or in an equivalent system. All recipes are ASI IP. In addition to IP that is on individual tools, ASI IP is included on the RSS server and in Fab 300 files.
- b. **Process Tools** –
  - i. IP Access Verification – All 3<sup>rd</sup> party (non SVTC or ASI engineers) that have had access to process tools must be listed.
  - ii. IP File Inventory and Audit - Each process tool must be powered up and have the recipe storage capability verified by the ASI engineer to no longer contain ASI IP. Any IP that was on the tool must be accounted for and an inventory of recipe files including content and format must be audited for completeness by the ASI process engineer. The data storage device containing the IP must be stored in a secure location and must be verified as being under lock and key and supported with a procedure that verifies who has access. IP storage must be in a format that maintains the utility of the recipes. Tools containing ASI IP cannot be delivered to a 3<sup>rd</sup> party and the 3<sup>rd</sup> party engineer cannot have access to the

tool's data storage until the ASI IP has been removed and verified by an ASI engineer.

**c. Servers and WIP Management Systems -**

- i. RSS server – The RSS (Recipe Security System) must be powered up and have the recipe storage capability verified by the ASI engineer to no longer contain ASI IP. Any IP that was on the server must be accounted for and an inventory of recipe files including content and format must be audited for completeness by the ASI process engineer. The data storage device containing the IP from the RSS server must be stored in a secure location and must be verified as being under lock and key and supported with a procedure that verifies who has access. IP storage must be in a format that maintains the utility of the recipes.
- ii. Fab 300 – The Fab 300 system contains all of the ASI San Jose proprietary process flows and lot histories. The Fab 300 system must be powered up and have the process and history storage capability verified by the ASI engineer to no longer contain ASI IP. Any IP that was on the server must be accounted for and an inventory of process files including content and format must be audited for completeness by the ASI process engineer. The data storage device containing the IP from the Fab 300 server must be stored in a secure location and must be verified as being under lock and key and supported with a procedure that verifies who has access. Process file and history storage must be in a format that allows for reading the files such as word or pdf.
- iii. Workstream – The Workstream system contains all of the ASI Austin proprietary process flows and lot histories. The Workstream system must be powered up and have the process and history storage capability verified by the ASI engineer to no longer contain ASI IP. Any IP that was on the server must be accounted for and an inventory of process files including content and format must be audited for completeness by the ASI process engineer. The data storage device containing the IP from the Workstream server must be stored in a secure location and must be verified as being under lock and key and supported with a procedure that verifies who has access. Process file and history storage must be in a format that allows for reading the files such as word or pdf.

**3. Misc wafer and Travelers**

- a. Approximately 11 boxes of miscellaneous ASI test wafers and lot remnants need to be verified as boxed and bagged. The DSI engineer will provide an inventory and the ASI engineer will confirm wafer counts. Post verification sealing will be completed in the same manner as done for reticles.
- b. Travelers – At least two ASI travelers must be verified. The DSI engineer will provide an inventory and the ASI engineer will confirm traveler documents. Post verification storage will be completed in the same manner as done for reticles.



JS 44 C&amp;ND (Rev. 12/11)

ORIGINAL  
CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

AMERICAN SEMICONDUCTOR, INC., an Idaho corporation

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

John N. Zarian (SBN: 145080); Parsons Behle & Latimer  
960 Broadway Ave., Suite 250, Boise, ID 83706  
(208) 562-4900

## DEFENDANTS

CALIFORNIA ASSIGNMENTS LLC, a California limited liability company; DEVELOPMENT SPECIALISTS, INC., an Illinois corporation; and DOES 1 through 10, inclusive

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

CV 12-6138

HRL

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                                       |                                       |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
|   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4            | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Motor Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395M) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>IMMIGRATION</b>	<b>FEDERAL TAX SUITS</b>	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 U.S.C. Section 1391

Brief description of cause:

Action for conversion and misappropriation of trade secrets.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 in excess of \$75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

## IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/DAKLA ND ☒ SAN JOSE ☐ EUREKA

DATE 12/04/2012

SIGNATURE OF ATTORNEY OF RECORD

000842

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity.  
Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

**Demand.** In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

**Jury Demand.** Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

IX. **Divisional Assignment.** In accordance with Civil L.R. 3-2(c) - (f), select the appropriate venue based upon the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
gth@moffatt.com  
25332.0000

Attorneys for Defendant/Cross-Claimant Zilog, Inc.

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 4:33

APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By ELYSHIA HOLMES  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S MOTION TO COMPEL**

COMES NOW the above-named defendant, Zilog, Inc. ("Zilog"), by and through its undersigned attorneys of record, and pursuant to Rules 26, 34 and 37 of the Idaho Rules of Civil Procedure, respectfully moves the Court to enter an Order compelling plaintiff American Semiconductor, Inc., ("ASI" or "plaintiff") as follows:

(1) Zilog seeks an Order of the Court compelling ASI to fully respond to Interrogatory No. 3 of Zilog's First Set of Discovery Requests to Plaintiff, by immediately describing, with reasonable particularity, "each and every one of the trade secrets, 'Inventions,' 'Secrets' and other protectable interests owned by ASI that are the subject matter of ASI's Second Amended Complaint";

(2) Zilog seeks an Order of the Court compelling ASI to fully respond to Requests for Production Nos. 1 through 6 of Zilog's First Set of Discovery Requests to Plaintiff, by immediately producing any and all documents and records, including those from ASI's own files and records, containing any of the trade secrets, "Inventions," "Secrets" and other protectable interests referenced in paragraphs 39, 96, 97, 123, 126 and 129 of ASI's Second Amended Complaint;

(3) Zilog seeks an Order of the Court compelling ASI to fully respond to Request for Production No. 10 of Zilog's First Set of Discovery Requests to Plaintiff, by producing "any and all documents and records that evidence any confidentiality or nondisclosure agreement between ASI and any other entity involving any ASI intellectual property, including but not limited to, design work, invention or discovery";

(4) Zilog seeks an Order of the Court compelling ASI to fully respond to Request for Production No. 12 of Zilog's First Set of Discovery Requests to Plaintiff, by producing "any and all employee agreements between ASI and any of its current or former


employees including those agreements regarding the assignment of any invention, trade secret, or any other intellectual property”; and

(5) Zilog seeks an Order of the Court compelling ASI to fully respond to Request for Production Nos. 15 of Zilog’s First Set of Discovery Requests to Plaintiff, by producing “any and all documents and records evidencing ASI’s claim that ASI owns the trade secrets that are the subject matter of ASI’s Second Amended Complaint and Demand for Jury Trial.”

This motion is based upon the record before the Court, including the supporting memorandum of law and declaration of counsel filed contemporaneously herewith. The grounds for this motion are set forth in the memorandum of law filed herewith.

DATED this 18th day of April, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Stephen R. Thomas – Of the Firm  
Attorneys for Defendant/Cross-Claimant  
Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 2014, I caused a true and correct copy of the foregoing **ZILOG, INC.'S MOTION TO COMPEL** to be served by the method indicated below, and addressed to the following:

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*Attorney for Sage Silicon Solutions, LLC; David  
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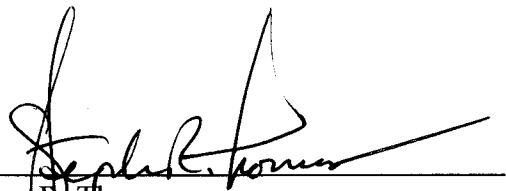
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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:33

APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By ELYSHIA HOLMES  
DEPUTY

Attorneys for Defendant/Cross-Claimant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**MEMORANDUM IN SUPPORT OF  
ZILOG, INC.'S MOTION TO COMPEL**

## I. INTRODUCTION

Defendant Zilog, Inc. ("Zilog") submits this Memorandum in Support of its Motion to Compel against American Semiconductor, Inc. ("ASI"), requesting the Court enter an order compelling discovery from ASI on five (5) issues.

First, Zilog seeks an Order of the Court compelling ASI to fully respond to Zilog's Interrogatory No. 3 by immediately describing, with reasonable particularity, each of the trade secrets (and other protected information) that ASI claims Zilog has misappropriated. Although ASI filed this lawsuit almost two and one-half years ago, ASI has refused to identify its allegedly misappropriated trade secrets, most recently stating: "ASI is still in the process of confirming the nature and scope of the trade secrets it alleges were misappropriated by the defendants in this case." ASI should have undertaken and completed the process of identifying the alleged trade secrets at issue before ASI filed this lawsuit 28 months ago alleging that Zilog was using ASI's trade secrets.

Unless and until ASI discloses the purported trade secrets allegedly misappropriated by the defendants, Zilog cannot determine:

- (a) whether each of ASI's alleged trade secrets is, in fact, a trade secret, i.e., whether the alleged trade secret has derived independent economic value, actual or potential, by not being generally known to or lawfully ascertainable by others and whether ASI made reasonable efforts to maintain the secrecy of the alleged trade secret;
- (b) whether Sage Silicon Solutions, LLC, or one of the individual Defendants, used the alleged trade secret in performing any work for Zilog; and
- (c) what, if any, value the alleged trade secret might have or what, if any, damages the purported misappropriation of the alleged trade secret might have caused.



At ASI's insistence, this case has been set for trial commencing December 2, 2014, and at present Zilog cannot even have an expert conduct a meaningful review of ASI's claim of misappropriation of its trade secrets because ASI will not disclose what alleged trade secrets ASI claims the defendants misappropriated. Thus, Zilog requests the Court to order ASI to identify, with reasonable specificity, the trade secrets that ASI claims the defendants have misappropriated.

Second, Zilog seeks an Order of the Court compelling ASI to fully respond to Request for Production Nos. 1 through 6 of Zilog's First Set of Discovery Requests to Plaintiff by immediately producing any and all documents and records (including those from ASI's own files and records) containing any of the trade secrets, "Inventions," "Secrets" and other protectable interests referenced in paragraphs 39, 96, 97, 123, 126 and 129 of ASI's Second Amended Complaint. ASI has previously identified approximately 300 pages of documents produced by Sage (in the range of SAGE 233 to SAGE 3226) as documents that "*may* disclose certain trade secrets, 'Inventions,' 'Secrets' and other protectable interests owned by ASI that are at issue in this lawsuit" and stated that ASI "shall supplement this answer, as warranted, pursuant to the Rules and Subject to the foregoing objections." Zilog seeks to compel ASI to immediately produce those documents and records (including those from ASI's own files and records) that, in ASI's view, do (rather than "may" or "might") contain any of the trade secrets, "Inventions," "Secrets" and other protectable interests referenced in paragraphs 39, 96, 97, 123, 126 and 129 of ASI's Second Amended Complaint. At this late stage of the litigation, ASI cannot fairly ask Zilog to continue to guess what trade secrets and other protected information ASI contends Zilog misappropriated.

Third, Zilog seeks an Order of the Court compelling ASI to fully respond to Request for Production No. 10 of Zilog's First Set of Discovery Requests to Plaintiff by producing "any and all documents and records that evidence any confidentiality or nondisclosure agreement between ASI and any other entity involving any ASI intellectual property, including but not limited to, design work, invention or discovery." Similarly, Zilog seeks an Order of the Court compelling ASI to fully respond to Request for Production No. 12 of Zilog's First Set of Discovery Requests to Plaintiff by producing "any and all employee agreements between ASI and any of its current or former employees including those agreements regarding the assignment of any invention, trade secret, or any other intellectual property." In order to prove that ASI's alleged trade secrets are in fact trade secrets within the meaning of the Idaho Trade Secrets Act, ASI must prove that it made reasonable efforts to maintain the secrecy of its alleged trade secrets. If ASI cannot establish that it owns the alleged trade secrets that are the subject matter of its Second Amended Complaint, or that ASI made reasonable efforts to maintain the secrecy of those alleged trade secrets, then ASI's claim that Zilog violated the Idaho Trade Secrets Act by misappropriating ASI's trade secrets must fail. Thus, the relevance of the information sought by Zilog's Request for Production Nos. 10 and 12 cannot be challenged.

Fifth and finally, Zilog seeks an Order of the Court compelling ASI to fully respond to Request for Production No. 15 of Zilog's First Set of Discovery Requests to Plaintiff by producing "any and all documents and records evidencing ASI's claim that ASI owns the trade secrets that are the subject matter of ASI's Second Amended Complaint and Demand for Jury Trial." Clearly, ASI must produce all such documents and records. However, it is not clear from ASI's correspondence that all such documents and records have been produced.

As set forth in the affidavit of counsel filed herewith, Zilog has exchanged several letters with ASI in an attempt to obtain the requested discovery materials without court action. Declaration of Stephen R. Thomas ("Thomas Dec."), ¶¶ 6-8; Exs. D-F. Since these good faith efforts have been unsuccessful, Zilog has no choice but to file the instant motion with the Court.

## **II. LEGAL STANDARD**

Idaho Rule of Civil Procedure 37(a)(2) provides that a motion may be brought to compel a party to respond to an interrogatory submitted under Rule 33 or a request for production propounded pursuant to Rule 34. IDAHO R. CIV. P. 37(a)(2). Whether to grant a motion to compel is within the sound discretion of the Court. *See Merrifield v. Arave*, 128 Idaho 306 (Ct. App. 1996). Rule 26(b)(1) permits "broad discovery of any matter that is not privileged, even if it is inadmissible, so long as it is 'reasonably calculated to lead to the discovery of admissible evidence.'" *Kirk v. Ford Motor Co.*, 141 Idaho 697, 703-04 (2005). "The burden of showing information is privileged, and therefore exempt from discovery is on the party asserting the privilege." *Id.*

## **III. ARGUMENT**

### **A. ASI Must Immediately Identify, with Specificity or Reasonable Precision, the Alleged Trade Secrets and Other Protectable Interests That ASI Claims Zilog Misappropriated.**

On December 2, 2011, ASI instituted this civil action by filing a Complaint and Demand for Jury Trial ("Complaint"), naming as defendants: (a) Sage Silicon Solutions, LLC ("Sage"); (b) Zilog, Inc.; and (c) five (5) individuals—David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany and Evelyn Perryman—referred to as the "Individuals" or the "Individual Defendants." In its Complaint ASI alleged, among other things, that Zilog was using "products which incorporate 'Inventions' and trade secrets belonging to American

Semiconductor,” and ASI sought “injunctive relief preventing . . . Zilog from utilizing American Semiconductor’s ‘Inventions’ or trade secrets . . . .” Complaint, p. 19, ¶ 118; *id.*, p. 21, ¶ d.

Six (6) days later, on December 8, 2011, ASI filed an Amended Complaint and Demand for Jury Trial (“Amended Complaint”) alleging, among other things, that the Individual Defendants and Sage had misappropriated ASI’s “trade secrets and/or other protectable interests” and had utilized such trade secrets and/or other protectable interests in providing services to Zilog, in violation of the Idaho Trade Secrets Act. Amended Complaint, p. 15, ¶¶ 88-89. In this regard, ASI’s Amended Complaint states:

88. Based on information and belief, the Individual Defendants, as employees of [ASI], obtained [ASI’s] trade secrets and/or other protectable interests and business model for design services as a result of their employment.

89. Based on information and belief, such trade secrets and/or other protectable interests were utilized in providing services to Zilog, in violation of the Idaho Trade Secret Act.

Amended Complaint, p. 15, ¶¶ 88-89.

Eighteen (18) months later, on May 31, 2013, ASI made Zilog a party to this action by serving Zilog with a Summons and a copy of the Amended Complaint.

On July 2, 2013, ASI filed its Second Amended Complaint and Demand for Jury Trial (“Second Amended Complaint”). In its Second Amended Complaint, ASI no longer asserted claims against two (2) of the Individual Defendants, Russell Lloyd and Evelyn Perryman, but purported to assert eleven (11) causes of action against the remaining defendants.

*Despite the plethora of claims for relief that ASI is asserting against the defendants, the gravamen of ASI’s Complaint is that the Individual Defendants, while employed by ASI, formed Sage and, as Sage’s employees, used ASI’s trade secrets and other proprietary*

*information in providing services to Zilog pursuant to an Independent Contractor Services Agreement between Sage and Zilog.*<sup>1</sup>

In its Second Amended Complaint ASI claimed that not only Sage and the Individual Defendants, but also Zilog, had violated the Idaho Trade Secrets Act. *See* Second Amended Complaint, pp. 14-15, ¶¶ 94-99. The allegations of ASI's trade secret claims against the Individual Defendants and Sage, as set forth in paragraphs 88 and 89 of ASI's Amended Complaint, are identical to the allegations of ASI's trade secret claims against the Individual Defendants, Sage and Zilog as set forth in paragraphs 95 and 96 of ASI's Second Amended Complaint.

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<sup>1</sup> ASI's claims for relief against Zilog are as follows:

(a) In its Fifth Cause of Action ASI alleges claims against Zilog for alleged tortious interference with contract (Employee Confidentiality Agreements between the Individuals and ASI) and prospective economic advantage;

(b) In its Sixth Cause of Action ASI alleges a claim of violation of the Idaho Trade Secrets Act ("ITSA") against Zilog and seeks monetary damages, disgorgement of any benefit received by Zilog and a royalty for the unauthorized use of ASI's trade secrets and/or other protectable interests;

(c) In its Eighth Cause of Action ASI alleges a claim of unjust enrichment against Zilog based on ASI's theory that "Zilog has received a benefit in the form of ASI's trade secrets and other protectable interest as a direct result of its solicitation and/or acceptance of services from the Individuals and Sage";

(d) In its Tenth Cause of Action ASI seeks declaratory relief against Zilog in the form of an assignment of rights in all of ASI's alleged intellectual property purportedly incorporated into Zilog products and, pursuant to ITSA, a royalty for all of ASI's alleged intellectual property purportedly incorporated into Zilog products; and

(e) In its Eleventh Cause of Action ASI seeks injunctive relief preventing Zilog "from utilizing or disclosing American Semiconductor's 'Inventions' or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such 'Inventions' or trade secrets."

In its Second Amended Complaint, ASI alleges:

95. Based on information and belief, the Individual Defendants, as employees of American Semiconductor, obtained American Semiconductor's trade secrets and/or other protectable interests and business model for design services as a result of their employment.

96. Based on information and belief, such trade secrets and/or other protectable interests were utilized in providing services to Zilog, in violation of the Idaho Trade Secret[s] Act.

97. Based on information and belief, Zilog obtained such trade secrets and/or other protectable interests inherent in the design services rendered by the Individuals and in violation of the Idaho Trade Secret[s] Act.

Second Amended Complaint, pp. 14-15, ¶¶ 95-97.

In order to prevail in a misappropriation action under the Idaho Trade Secrets Act, ASI "must show that a trade secret actually existed." *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 898, 243 P.3d 1069, 1086 (2010), citing *Basic Am., Inc. v. Shatila*, 133 Idaho 726, 735, 992 P.2d 175, 184 (1999). "Without a proven trade secret there can be no misappropriation, even if the defendant[']s action was wrongful." *Shatila*, 133 Idaho at 735, 992 P.2d at 184, citing *Electro-Craft Corp. v. Controlled Motion, Inc.*, 332 N.W.2d 890, 897 (Minn. 1983).

The Idaho Trade Secrets Act defines a trade secret as:

Information, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that:  
(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

IDAHO CODE § 48-801(5). The law is clear that general "know how" is not a trade secret.

See *Wesco* ("[a]n employee will naturally take with her to a new company the skills, training,

and knowledge she has acquired from her time with her previous employer.”) (quoting *Nw. Bec-Corp v. Home Living Serv., Inc.*, 136 Idaho 835, 839, 41 P.3d 263, 267 (2002)). “[A]ny other rule would force a departing employee to perform a prefrontal lobotomy on himself or herself.” *Nw. Bec-Corp, supra*, 136 Idaho at 840, 41 P.3d at 268 (citation and quotation marks omitted).

Thus, in *Shatila*, the Idaho Supreme Court quoted with approval the following language from *Universal Analytic, Inc. v. MacNeal-Schwendler Corp.*, 707 F. Supp. 1170 (C.D. Cal. 1989):

***When making a claim for the wrongful use of trade secrets, “the complainant should describe the subject matter of the trade secret with sufficient particularity to separate it from matters of general knowledge in the trade or of special knowledge of those persons skilled in the trade.”***

707 F. Supp. at 1177 (citation omitted) (emphasis added). *Jobscience, Inc. v. CVPartners, Inc.*, C 13-04519 WHA, 2014 WL 852477 at \*5 (N.D. Cal. Feb. 28, 2014) (“A true trade secret plaintiff ought to be able to identify, up front, and with specificity the particulars of the trade secrets without any discovery.”).<sup>2</sup>

Ordinarily, a plaintiff’s misappropriation of trade secrets claim is tested up front, before discovery commences. In issuing its recent opinion in *Jobscience*, the United States District Court for the Northern District of California discussed why a plaintiff is required to

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<sup>2</sup> While it is true that California’s Trade Secret Act contains a statutory provision mandating that plaintiffs identify alleged trade secrets with specificity, courts examining the statutory requirement have concluded that the requirements of California’s statute are no greater than those encompassed by the discoverable information included in Rule 26. *See Agency Solutions Com, LLC v. TriZetto Grp., Inc.*, 819 F. Supp. 2d 1001, 1017-18 (E.D. Cal. 2011) (“application of section 2019.210 is generally consistent with Rule 26’s requirements of early disclosure of evidence relevant to the claims at issue and the Court’s authority to control the timing and sequence of discovery in the interests of justice.”); *Jobscience*, 2014 WL 93976 at \*8.

plead a trade secrets claim with reasonable particularity before engaging in discovery. The court explained:

*Experience has shown that it is easy to allege theft of trade secrets with vagueness, then take discovery into the defendants' files, and then cleverly specify whatever happens to be there as having been trade secrets stolen from plaintiff. A true trade secret plaintiff ought to be able to identify, up front, and with specificity the particulars of the trade secrets without any discovery. This order will not allow this old trick of vague pleading with the blanks to be artfully filled in only after discovery.*

*Jobsience*, 2014 WL 852477 at \*5 (emphasis added).<sup>3</sup>

On September 23, 2013, Zilog served ASI with Zilog's First Set of Discovery Requests to Plaintiff. Thomas Dec., ¶ 3. As it relates to ASI's trade secrets claims, Zilog requested that ASI identify "in as much detail as possible" the trade secrets that ASI alleges to have been misappropriated:

INTERROGATORY NO. 3: Please describe in as much detail as possible each and every one of the trade secrets, "Inventions," "Secrets" and other protectable interests owned by ASI that are the subject matter of ASI's Second Amended Complaint.

Thomas Dec., ¶ 3; Ex. A, p. 10. In Request for Production Nos. 1 through 6 of Zilog's First Set of Discovery Requests to Plaintiff, Zilog requested ASI produce the documents and records containing the trade secrets, "Inventions," "Secrets" and other protectable interests referenced in paragraphs 39, 96, 97, 123, 126 and 129 of ASI's Second Amended Complaint. Thomas Dec., ¶ 3; Ex. A, pp. 6-8.

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<sup>3</sup> The definition of a "trade secret" under California's version of the Uniform Trade Secrets Act is identical to Idaho's. *Compare* CAL. CIV. CODE 3426.1 *with* IDAHO CODE § 48-801(5).



On October 24, 2013, ASI served American Semiconductor, Inc.'s Responses to Zilog, Inc.'s Interrogatories (Nos. 1-3) and stated the following in response to Zilog's Interrogatory No. 3:

**RESPONSE:** ASI incorporates the Common Objections as set forth above to the extent applicable. Objects to this request as vague, ambiguous, overbroad and unduly burdensome, and because it is compound. Among other things, this interrogatory expressly demands "as much detail as possible," refers to "each and every one" of ASI's "inventions" and "trade secrets" and "other protectable interests," and is directed at "the subject matter" of an entire pleading. The interrogatory also seeks records spanning an indeterminate time period. ASI also objects to this request to the extent that Zilog seeks production of records that are either at least as readily available to Zilog as they are to ASI or are more easily obtainable from the other defendants in this action. In addition, ASI objects to this request on the basis that a full and complete response will require unreasonable and unwarranted expense and efforts on ASI's part. ASI also objects to this interrogatory to the extent that it seeks answers obtainable through other less expensive means, and to the extent it seeks information not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving these objections, *ASI answers generally that the trade secrets, "Inventions," "Secrets" and other "protectable interests" it owns and which are the "subject matter of this lawsuit" include, without limitation, all design work, layouts, design revisions, design corrections, product integration, test benches, Verilog files, engineering analyses, third party intellectual property implementation and any other work performed by the Former Employees either in their personal capacities or through Sage Silicon Solutions.*

*ASI further states that its investigation regarding the scope of its proprietary information that is alleged to be or to have been improperly in the hands of defendants, including Zilog, is on-going and that it shall supplement this answer, as warranted, pursuant to the Rules and subject to the foregoing objections.*

Thomas Dec., ¶ 4; Ex. B, p. 7 (emphasis added).

On January 10, 2014, ASI served Zilog with American Semiconductor, Inc.'s First Supplemental Response to Zilog, Inc.'s Interrogatories. Thomas Dec., ¶ 5. In response to Zilog's Interrogatory No. 3, ASI stated:

**FIRST SUPPLEMENTAL RESPONSE:** Subject to, and without waiving the foregoing objections, ASI further answers *that records identified below, as produced by one or more of Zilog's co-defendants, may disclose certain trade secrets, "Inventions," "Secrets" and other protectable interests owned by ASI that are at issue in this lawsuit and that the burden of further deriving an answer is substantially the same, under the circumstances, for Zilog as it is for ASI.*

SAGE 233 – 254	SAGE 324 – 331	SAGE 387 – 388	SAGE 447
SAGE 255	SAGE 332 – 337	SAGE 389	SAGE 448
SAGE 256	SAGE 338 – 342	SAGE 390	SAGE 449 – 50
SAGE 260-261	SAGE 343 – 344	SAGE 391 - 392	SAGE 451 – 452
SAGE 262-263	SAGE 345 – 347	SAGE 393	SAGE 453
SAGE 264	SAGE 348 – 349	SAGE 394	SAGE 454 – 464
SAGE 265-267	SAGE 350 – 353	SAGE 395	SAGE 465 – 469
SAGE 268 – 269	SAGE 354 – 359	SAGE 396	SAGE 470 – 475
SAGE 270 – 275	SAGE 355	SAGE 397	SAGE 476
SAGE 276 – 283	SAGE 356	SAGE 398 – 402	SAGE 477 – 478
SAGE 284 – 285	SAGE 357	SAGE 403	SAGE 479 – 481
SAGE 286 – 287	SAGE 358	SAGE 404 – 405	SAGE 482 – 484
SAGE 288 – 289	SAGE 359	SAGE 406	SAGE 485
SAGE 290 – 293	SAGE 360 – 363	SAGE 407 – 408	SAGE 486
SAGE 294	SAGE 364 – 365	SAGE 409	SAGE 487
SAGE 295	SAGE 366	SAGE 410	SAGE 488
SAGE 296 – 297	SAGE 367	SAGE 411	SAGE 489 – 490
SAGE 298	SAGE 368	SAGE 412	SAGE 491 – 492
SAGE 299 – 303	SAGE 369	SAGE 413 – 416	SAGE 493
SAGE 304	SAGE 370	SAGE 417 – 418	SAGE 494
SAGE 305	SAGE 371	SAGE 419 – 424	SAGE 495
SAGE 306	SAGE 372	SAGE 425 – 426	SAGE 496
SAGE 307 – 312	SAGE 373 – 374	SAGE 427	SAGE 497
SAGE 313 – 314	SAGE 375 – 377	SAGE 428 – 430	SAGE 498 – 499
SAGE 315 – 316	SAGE 378	SAGE 431 – 432	SAGE 540 – 543
SAGE 317 – 318	SAGE 379	SAGE 433 – 434	SAGE 1036
SAGE 319	SAGE 380	SAGE 435 – 437	SAGE 2387 - 2388
SAGE 320	SAGE 381	SAGE 438 – 440	SAGE 2475 - 2484
SAGE 321	SAGE 382	SAGE 441 – 443	SAGE 3213 - 3214
SAGE 322	SAGE 383	SAGE 444	SAGE 3226
SAGE 323	SAGE 384 – 386	SAGE 445 – 446	

*ASI further states that* its investigation regarding the scope of its proprietary information that is alleged to be or to have been improperly in the hand of defendants, including Zilog is on-going and that *it shall supplement this answer*, as warranted, pursuant to the Rules and subject to the foregoing objections.

Thomas Dec., ¶ 5; Ex. C (Supplemental Response, p. 6) (emphasis added).<sup>4</sup>

Then, in a letter dated March 10, 2014, ASI's counsel told Zilog's counsel that:

*ASI is still in the process of confirming the nature and scope of the trade secrets it alleges were misappropriated by the defendants in this case.*

Thomas Dec., ¶ 6; Ex. D, p. 1 (emphasis added).<sup>5</sup>

More than six (6) months ago, Zilog served discovery requests on ASI in order to determine what trade secrets ASI claims the defendants misappropriated. In its initial response ASI contended that its trade secrets "include, without limitation, all design work, layouts, design revisions, design corrections, product integration, test benches, Verilog files, engineering analysis, third party intellectual property implementation and any other work performed by the [Individual Defendants] in their personal capacities or through Sage Silicon Solutions."

(Emphasis added.) ASI's supplemental response is just as vague, referring Zilog to records produced by Sage that "may disclose certain trade secrets, 'Inventions,' 'Secrets' and other protectable interests owned by ASI" (emphasis added), and arguing that the "burden of further deriving an answer is substantially the same, under the circumstances, for Zilog as it is for ASI."

Based on these vague responses it is unclear what ASI alleges its trade secrets to be, separate and apart from the general know-how and knowledge of Sage or the Individual Defendants. ASI should not be permitted to allege misappropriation of trade secrets unless it

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<sup>4</sup> Unbelievably, SAGE 233-254—the very first document that ASI contends may include ASI's trade secrets or other protectable information—is Zilog's own Independent Contractor Services Agreement with Sage. How that Independent Contractor Services Agreement, which was drafted by Zilog, could contain ASI's trade secrets is a mystery.

<sup>5</sup> ASI's letter dated March 10, 2014, was served in response to Zilog's letter dated February 10, 2014. See Thomas Dec., ¶¶ 8; Ex. F.

identifies the trade secrets that were allegedly misappropriated. As a defendant in this action, Zilog does not bear the burden of disproving the non-existence of ASI's trade secrets.

Despite the fact that ASI brought this litigation over 28 months ago, ASI has failed to identify the alleged trade secrets at issue with the specificity required to enable Zilog to defend ASI's claim that Zilog has misappropriated ASI's trade secrets. ASI's descriptions of its trade secrets can be read so broadly as to incorporate everything about ASI's business and business practices. Such an ambiguity leaves Zilog unable to effectively defend this case. At ASI's insistence, trial has been scheduled for December 2, 2014, which is less than eight (8) months away. ASI's continued evasiveness can no longer be permitted.

By contrast to the plaintiff in *Jobscience*, ASI has already been permitted to conduct discovery into defendants' files without being forced to identify its trade secrets with particularity. To date, Zilog has produced more than 60,000 pages of documents or electronic files to ASI (identified as Bates Nos. Z000001-Z035593). In addition, ASI has been privy to nearly 5,000 pages of records produced by Sage and the Individual Defendants. Yet, despite unfettered access to the defendants' records and almost two and a half years to identify its trade secrets with reasonable particularity, ASI merely asserts that various documents produced by Sage may contain ASI's trade secrets.

Moreover, although almost two and a half years have passed since ASI first alleged a trade secrets violation, ASI has failed to point to a single document in its own files that contains what ASI believes to be its trade secret information.

Faced with similar deficiencies, the court in *Jobscience* ordered the plaintiff to specify its alleged trade secret for both the defendant and the court. Specifically, the court required the plaintiff:

For each trade secret, plaintiff must file, and serve on counsel, a statement, under seal, that should include: (1) a summary of the specific trade secret; (2) the background of the trade secret and a description of how each secret has derived independent, actual or potential economic value by virtue of not being generally known to the public; (3) a description of how each secret has been the subject of reasonable efforts to maintain its secrecy; and finally (4) each of the precise claimed trade secrets, numbered, with a list of the specific elements for each, as claims would appear at the end of a patent.

*Jobscience, Inc. v. CVPartners, Inc.*, C 13-04519 WHA, 2014 WL 852477 (N.D. Cal. Feb. 28, 2014). Zilog submits that it is entitled to similar relief in order to respond to the claims made against it. Thus, Zilog requests that this Court enter an Order compelling ASI to describe, with specificity or reasonable precision, “each and every one of the trade secrets, ‘Inventions,’ ‘Secrets’ and other protectable interests owned by ASI that are the subject matter of ASI’s Second Amended Complaint” in response to Zilog’s Interrogatory No. 3.

**B. ASI Must Produce Documents Evidencing ASI’s Alleged Ownership of Its Claimed Trade Secrets and ASI’s Efforts, if any, to Maintain the Secrecy of Its Alleged Trade Secrets.**

The Court should also grant Zilog’s motion to compel full responses to Request for Production Nos. 10 and 12 because ASI’s ownership of its alleged trade secrets and its efforts to protect its intellectual property are threshold components of ASI’s trade secrets claims against Zilog. Whether ASI took measures to guard the secrecy of the information is a key element of proving that Zilog, or anyone else, misappropriated ASI’s trade secrets. *See Wesco Autobody*, 149 Idaho 881, 897, 243 P.3d 1069, 1085. Six factors are relevant to whether a trade secret exists:

- (1) the extent to which the information is known outside [the plaintiff’s] business;
- (2) the extent to which it is known by employees and others involved in the business;
- (3) *the extent of measures taken by him to guard the secrecy of the information;*
- (4) the value of the information to him and his competitors;
- (5) the

amount of effort or money expended by him in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Id.* at 897-98 (citing *Basic Am. Inc. v. Shatila*, 133 Idaho 726, 735, 992 P.2d 175, 184 (1999)) (emphasis added). These factors all relate to “whether the information in question is generally known or readily ascertainable.” *Id.*

To obtain evidence regarding the existence of ASI’s alleged trade secrets, Zilog propounded Request for Production Nos. 10 and 12. Thomas Dec., ¶ 3 Ex. A. Request for Production No. 10 states:

Please produce any and all documents and records that evidence any confidentiality or nondisclosure agreement between ASI and any other entity involving an ASI intellectual property, including but not limited to, design work, invention or discovery.

Request for Production No. 12 states:

Please produce any and all employee agreements between ASI and any of its current or former employees ***including those agreements regarding the assignment of any invention, trade secret, or any other intellectual property.***

(Emphasis added.)

ASI responded to these requests by producing confidentiality agreements that it claims were signed by the Individual Defendants, as well as a pro-forma confidentiality agreement that its non-federal government customers “typically” execute. Thomas Dec., ¶ 6; Ex. D, p. 1. ASI objected to producing additional records on two grounds: first, that the requests are premature since “ASI is still in the process of confirming the nature and scope of trade secrets it alleges were misappropriated by [the] defendants . . .;” and second, that the requests seek records that “are governed by duties to third parties compelling ASI to maintain such records in confidence.” *Id.*

Zilog requests that the Court compel ASI to fully respond to these requests for three reasons: first, the evidence requested is relevant to one or more of the threshold components of ASI's trade secrets claims against Zilog; second, ASI should not be given the discretion to independently determine the appropriate time to produce responsive records; and third, ASI should not be allowed to put its efforts to keep information confidential at issue while simultaneously refusing to disclose evidence of such efforts.

**1. Request for Production No. 10 seeks relevant evidence because ASI's efforts to keep its information secret is a threshold component of its trade secrets claims.**

Records of the confidentiality and non-disclosure agreements between ASI and other entities are within the scope of discovery because such agreements are evidence of the efforts, or lack thereof, that ASI undertook to guard its intellectual property. As set forth above, ASI's efforts to keep its intellectual property secret bear directly on whether or not the underlying information qualifies as a trade secret and, thus, whether ASI can maintain any trade secrets claim against Zilog. Records of ASI's confidentiality agreements with its employees are similarly relevant because such records would indicate how frequently, and on what terms, ASI granted others access to its allegedly secret information. (Records regarding ASI's current and former employees' assignment of inventions, trade secrets, or any other intellectual property are relevant to ASI's claim of ownership of its alleged trade secrets and other intellectual property.) As set forth above, the existence of a trade secret depends in large part on "whether the information in question is generally known or readily ascertainable." *Wesco Autobody Supply Inc.*, 149 Idaho at 898.

**2. The discovery rules do not grant ASI the discretion to respond only to those discovery requests it deems timely, or to those requests to which it is fully prepared to respond.**

As set forth above, ASI contends that Request for Production No. 10 is untimely because it is still in the process of determining which of, and to what extent, its trade secrets were misappropriated. The Rules of Civil Procedure do not give ASI the discretion to triage requests in this fashion. Rather, the Rules require ASI to (a) produce responsive documents within 30 days of receiving the request under Rule 34(a), and (b) supplement its responses thereafter to the extent required under Rule 26(e). Rule 26(d), which specifically provides that “methods of discovery may be used in any sequence,” further undermines ASI’s claim that Zilog’s discovery requests are “premature.”

Even if the discovery rules allowed the plaintiff to postpone responses until it was finished “confirming the nature and scope of trade secrets it alleges were misappropriated”—which they do not—the plaintiff has had more than two and one-half years to complete the task that it should have finished before it plead a misappropriation claim in the first place.

*Jobscience*, 2014 WL 852477 at \*5. Additional delays will only hamper the parties’ preparation for trial in this matter.

**3. ASI should not be permitted to put its efforts to keep information confidential at issue and subsequently refuse to produce evidence of such efforts.**

As discussed in subsection 1, above, ASI’s efforts to keep its intellectual property confidential are relevant to whether ASI has any trade secrets that could have been violated in the first place. As such, ASI should not be allowed to put the extent of its efforts at issue by asserting the trade secrets claim while simultaneously refusing to produce evidence regarding such efforts on grounds that the information is confidential. If ASI does not wish to bear the



burden of producing confidential information relevant to its trade secrets claims, it should not be allowed to reap any related benefit either. Put another way, ASI invited discovery into its control of purportedly "confidential" information the moment it asserted a trade secrets claim against Zilog.

**C. ASI Must Produce All Documentation Evidencing ASI's Claim That ASI Owns the Trade Secrets That Are the Subject Matter of ASI's Second Amended Complaint.**

Request for Production No. 15 of Zilog's First Set of Discovery Requests to Plaintiff states:

REQUEST FOR PRODUCTION NO. 15: To the extent, if any, that you have not already done so in response to one or more of the preceding requests for production, please provide any and all documents and records evidencing ASI's claim that ASI owns the trade secrets that are the subject matter of ASI's Second Amended Complaint and Demand for Jury Trial.

Thomas Dec., ¶ 3; Ex. A, p. 9. In correspondence, ASI states:

**Request for Production No. 15:** ASI believes that its responses to the preceding Requests for Production No. 1 through 14, as to be supplemented, are fully responsive, under the circumstances. Therefore, in light of the catch-all nature of this request, ASI believes that there are no additional records evidencing ownership of the trade secrets at issue.

Thomas Dec., ¶ 7; Ex. E, p. 2.<sup>6</sup> If ASI has not produced all records evidencing its alleged ownership of the trade secrets that are the subject matter of its Second Amended Complaint, ASI must do so immediately. ASI filed this lawsuit over 28 months ago, and trial is less than eight (8) months away. Zilog cannot reasonably be expected to be prepared for trial unless ASI

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<sup>6</sup> ASI's letter dated February 28, 2014, was served in response to Zilog's letter dated February 10, 2014. See Husch Dec., ¶¶ 5, 7; Exs. D, F.

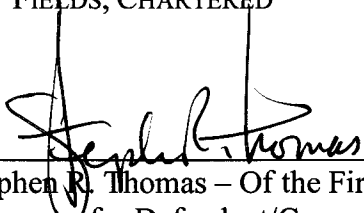
discloses all documentation of its ownership of the alleged trade secrets at issue without further delay.

#### IV. CONCLUSION

Based upon the foregoing, Zilog respectfully requests the Court to grant Zilog's Motion to Compel.

DATED this 18th day of April, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Stephen R. Thomas – Of the Firm  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 2014, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF ZILOG, INC.'S MOTION TO COMPEL** to be served by the method indicated below, and addressed to the following:

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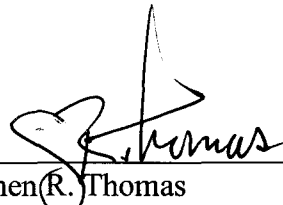
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S MEMORANDUM IN  
OPPOSITION TO MOTION TO  
COMPEL**

**ZILOG, INC.'S MEMORANDUM IN OPPOSITION  
TO MOTION TO COMPEL**

Client: 3321851.4  
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## I. INTRODUCTION

Plaintiff American Semiconductor, Inc. ("ASI") has filed a motion to compel: (1) production of documents by defendant Zilog, Inc. ("Zilog"); and (2) resumption of ASI's Rule 30(b)(6) deposition of Zilog. In opposition to ASI's motion, Zilog submits this memorandum and the Declarations of David R. Staab, Cheryl L. Dunham and Dan Eaton ("4/28/14 Eaton Dec.") filed herewith. Zilog also relies upon the 1/2/14 Declaration of Dan Eaton in Opposition to American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc. ("1/2/14 Eaton Dec."), and Zilog's papers filed with Zilog's Motion for Protective Order on April 18, 2014.<sup>1</sup>

In its motion, ASI asks this Court to enter an order requiring Zilog: (1) to produce documents comprising the "shared directory" identified by Zilog corporate witness designee David Staab; (2) to produce copies of confidential and/or proprietary license agreements existing between Zilog and three nonparties (Synopsis, Cadence and CAST); (3) to re-depose Zilog's corporate designees in Boise at Zilog's expense; and (4) to depose Zilog's corporate designee Rick White in Boise.

As further briefed as part of Zilog's own moving papers filed April 18, 2014, Zilog respectfully requests that this Court deny ASI's motion to compel, *in toto*, for the following reasons. First, by March 21, 2014, Zilog produced the documents comprising the "shared directory" identified by Zilog's corporate designee David Staab, and ASI's motion to

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<sup>1</sup> See Memorandum in Support of Zilog, Inc.'s Motion to Compel, at 8-9, citing *Jobscience, Inc. v. CVPartners, Inc.*, C 13-04519 WHA, 2014 WL 852477, at \*5 (N.D. Cal. Feb. 28, 2014) ("Experience has shown that it is easy to allege theft of trade secrets with vagueness, then take discovery into defendants' files, and then cleverly specify whatever happens to be there as having been trade secrets stolen from plaintiff. A true trade secret plaintiff ought to be able to identify, up front, and with specificity the particulars of the trade secrets without any discovery.").



compel documents comprising the “shared directory” is therefore moot. Second, ASI has failed to establish either the relevancy or legal authority for its proposition that it is entitled to obtain copies of confidential and/or proprietary license agreements between Zilog and nonparties. The appropriate procedural process to obtain this information is via third party discovery, a process that ASI admits it has instituted. Third party discovery would permit parties to the license agreements, whose rights may be effected by disclosure to ASI, to participate in the dispute. This is especially important in this case. Zilog’s license agreements with all three (3) third parties—Synopsys, Cadence and CAST—contain language that prohibits Zilog from disclosing the license agreements to ASI. *See* 1/2/14 Eaton Dec; 4/28/14 Eaton Dec. In addition, ASI has attempted to subpoena license agreements from Synopsys and Cadence. Synopsys has strenuously objected to producing copies of its license agreements to ASI, and ASI is simply attempting to circumvent Synopsys’ objections by bringing its motion to compel against Zilog rather than attempting to enforce ASI’s subpoena against Synopsys. Moreover, ASI has had its own license agreement with Cadence, and ASI knows full well that Cadence objects to disclosing to ASI the terms of its confidential license agreement with Zilog for business reasons.

Third, Zilog asks the Court to deny ASI’s request for an order compelling Zilog to produce its corporate designees in Boise for further depositions by ASI. To date Zilog has produced, at its sole cost and expense, three corporate witnesses in Boise, Idaho, to testify as to twenty-three (23) of the twenty-four (24) expansive deposition topics identified by ASI in its Notice of Rule 30(b)(6) Deposition to Defendant Zilog, Inc.<sup>2</sup> At least six of the twenty-four topics identified by ASI—including deposition topic no. 9 for which Zilog has designated former

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<sup>2</sup> *See* Exhibit A to the Declaration of Kennedy K. Luvai in Support of Plaintiff’s Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog’s Rule 30(b)(6) Deposition, dated April 18, 2014 (“4/18/14 Luvai Dec.”).

employee Rick White—concern Zilog’s alleged misappropriation of ASI’s trade secrets. *See* 4/18/14 Luvai Dec., Ex. A, deposition topic nos. 9 (“Communications regarding ASI and/or its proprietary technologies, intellectual property or trade secrets . . . .”); 12 (“Use of ASI’s proprietary technologies, intellectual property, trade secrets or other similar intangible assets . . . .”); 13 (“Benefits derived from use of ASI’s proprietary technologies, intellectual property, trade secrets or other similar intangible assets . . . .”); 15 (“Use of non-ASI proprietary technologies, intellectual property, trade secrets, or other similar intangible assets . . . .”); 16 (“Harm or damages sustained by ASI as a result of Zilog’s [sic] ASI’s proprietary technologies, intellectual property, trade secrets or other similar intangible assets . . . .”); and 21 (“Investigations conducted in connection with any allegations or factual assertions made by Zilog in this litigation.”).

After waiting eighteen (18) months to serve Zilog with a summons in this action, ASI chose to take the depositions of Zilog’s corporate designees—even seeking to force the issue by filing a motion to compel—despite the fact that at the time of its forced depositions of those corporate witnesses ASI had not yet “confirm[ed] the nature and scope of trade secrets that it alleges were misappropriated by defendants in this case.” *See* Exhibit C to the Thomas Dec. ISO Compel. In addition, ASI has forced Zilog to produce over 60,000 pages of documents or electronic files in this action. Thus, ASI’s contention that it has been “unfairly prejudiced” by Zilog’s production of Mr. Staab’s “project directory” rings hollow.<sup>3</sup>

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<sup>3</sup> *See* Memorandum in Support of Zilog, Inc.’s Motion to Compel, at 8-9, citing *Jobscience, Inc. v. CVPartners, Inc.*, C 13-04519 WHA, 2014 WL 852477, at \*5 (N.D. Cal. Feb. 28, 2014) (“Experience has shown that it is easy to allege theft of trade secrets with vagueness, then take discovery into defendants’ files, and then cleverly specify whatever happens to be there as having been trade secrets stolen from plaintiff. A true trade secret plaintiff ought to be able to identify, up front, and with specificity the particulars of the trade secrets without any discovery.”).

Fourth and finally, Zilog requests that this Court deny ASI's motion to compel Zilog to make Rick White available for deposition in Boise, Idaho. Contrary to ASI's assertions, Zilog has not refused to produce Mr. White. Rather, Zilog attempted to meaningfully confer with ASI to either set Mr. White's deposition to occur in Boise at a mutually agreeable time, taking into account convenience to Mr. White, or to make Mr. White available for deposition in Oregon. These reasonable accommodations comport with the prevailing presumption, adopted by federal courts examining the exact same issue (*i.e.*, the proper location of the deposition of a corporate defendant). As an alternative, Zilog submits that ASI be required to conduct the deposition of Mr. White by telephonic or videoconferencing means.

## II. LEGAL STANDARD

Rule 26(b)(2)(C) grants courts the discretion to weigh the burden or expense of proposed discovery against an assessment of its likely benefit, considering the needs of the case and the importance of the discovery in resolving the issues. The Rule "places an obligation on the trial court to limit the frequency or extent of discovery otherwise permitted by Rule 26(b)(1) based on a balancing analysis" that is "written in mandatory terms." *Bottoms v. Liberty Life Assurance Co. of Boston*, No. 11-cv-01606, 2011 WL 6181423, at \*4 (D. Colo. Dec. 13, 2011). Courts have "considerable authority to limit a party's pursuit of otherwise discoverable information where the burden of a discovery request is likely to outweigh the benefits." *Miller v. Ricci*, No. 11-859 (D.N.J. Feb. 26, 2013). This coincides with the general direction of Rule 26, which "vests the trial judge with broad discretion to tailor discovery narrowly and to dictate the sequence of discovery." *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998). The purpose of the Rule is to "promote judicial limitation of the amount of discovery on a case-by-case basis to avoid abuse or overuse of discovery through the concept of proportionality." At the same time,

the Court has also directed that the requirement of relevance of material sought in discovery should be “firmly applied.”

### III. ARGUMENT

**A. ASI’s Motion to Compel the Production of the “Shared Drive” Should Be Denied Because the Documents Comprising the “Shared Drive” Were Produced to ASI by March 21, 2014.**

In Section A of its Argument, ASI requests that this Court compel Zilog to produce the records comprising the “shared directory” identified during David R. Staab’s March 4, 2014 deposition. *See* Memorandum in Support of Plaintiff’s Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog’s Rule 30(b)(6) Deposition, filed April 18, 2014 (“Pl. 4/18/14 Mem.”), at 8-9. Zilog respectfully submits that it has produced the documents comprising the “shared directory,” and this issue is therefore moot. *See* Declarations of David R. Staab and Cheryl Dunham, filed concurrently herewith. Following Mr. Staab’s March 4, 2014 deposition, Mr. Staab “searched the shared directory for documents responsive to ASI’s requests for production of documents to Zilog.” Staab Dec., ¶ 4. The documents in the “shared directory” were for the most part duplicates of documents produced as part of the “project directory,” and Mr. Staab produced all of the documents in the shared directory to Zilog’s counsel. *Id.* Cheryl Dunham, a senior paralegal at Moffatt Thomas, caused every received document that could be processed to be given an identifying number, produced to ASI as Z033889 through Z035592. Declaration of Cheryl L. Dunham, ¶ 4. Documents that could not be processed were burned onto a separate disk and produced collectively as Z035593. *Id.* Ms. Dunham “prepared an index to the files produced as Z035593, giving each file a unique number, identified as Z035593.001 through Z035593.135.” *Id.*

The documents comprising the “shared directory” were produced to ASI no later than March 21, 2014, and Zilog has produced, at ASI’s request, more than 60,000 pages of documents or electronic files to date. Declaration of Cheryl L. Dunham, ¶ 5.

**B. ASI’s Motion to Compel the Production of License Agreements Between Zilog and Nonparties CAST, Cadence and Synopsys Should Be Denied.**

In Section A of its Argument, ASI also requests that this Court compel Zilog to produce certain license agreements existing between Zilog and three nonparties: CAST, Inc. (“CAST”), Cadence Design Systems, Inc. (“Cadence”) and Synopsys, Inc. (“Synopsys”). *See* Pl. 4/18/14 Mem., p. 9. ASI, however, has not identified any authority in support of its contention that, by virtue of filing this lawsuit, it is entitled to discover license agreements existing between Zilog and third parties. This deficiency is exacerbated by the fact that ASI admits that it cannot “confirm” any trade secret allegedly misappropriated by Zilog. *See* March 10, 2014 letter from ASI to Zilog, produced as Exhibit D to Thomas Dec. ISO Compel. It is unclear what relevance—if any—the license agreements between Zilog and nonparties have on this litigation. More importantly, because ASI’s requests seek copies of contracts that third parties deem confidential and/or proprietary, ASI should be required to obtain these documents by issuance of third-party subpoenas and, if necessary, a motion against the third party to enforce its subpoena. The Cadence, CAST and Synopsys agreements contain confidentiality provisions that prohibit disclosure of the terms of the agreements and/or require Zilog to give the company notice of any attempt to compel production of the agreements. *See* 1/2/14 Eaton Dec.; 4/28/14 Eaton Dec. Certainly, ASI should not ask the Court to order production of documentation that a third party claims to be its confidential information without providing the third party an opportunity to be heard. In this case, ASI admits that it has undertaken to subpoena records from Synopsys and Cadence but has apparently been unsuccessful. Synopsys strenuously objected, in writing, to

production of the license agreements. *See* 1/2/14 Eaton Dec., 4/28/14 Eaton Dec. ¶5; Ex. A. ASI is now attempting to circumvent Synopsys, Cadence and/or CAST's objections to production by moving to compel Zilog to produce those third parties' confidential agreements without providing any of them with notice of its motion to compel or an opportunity to be heard by this Court. Clearly, ASI should provide Synopsys, Cadence and CAST with an opportunity to be heard, preferably by moving to enforce its subpoenas or at least at a hearing on its present motion to compel against Zilog.

**C. ASI's Motion to Compel Zilog to "Re-Sit" Its Corporate Designees Should Be Denied.**

In Section B of its Argument, ASI makes broad, general arguments that Zilog should be required to re-sit its corporate designees. Pl.'s 4/18/14 Mem., at 10. ASI complains that its preparation of its Rule 30(b)(6) depositions of Zilog and Sage's corporate designees was "unfairly and prejudicially hampered" because ASI was forced to depose Zilog corporate designee David Staab after receiving Mr. Staab's "project directory" files only a day before Mr. Staab sat for deposition. ASI has not sought to confer meaningfully with Zilog about this issue. Nor has ASI identified any specific topic items set forth in its 30(b)(6) notice wherein ASI has been prejudiced. Nor can ASI credibly allege such "prejudice." It was ASI that aggressively sought to depose Zilog's corporate designees as to 24 topics, including ASI's trade secret claims. ASI forced Zilog to designate and sit corporate designees as to these topics despite previously failing or refusing to inform Zilog—as part of ASI's responses to Zilog's discovery responses or otherwise—of exactly what ASI claims to be the "trade secret" information that Zilog allegedly misappropriated. As is the subject of Zilog's motion to compel, filed April 18, 2014, ASI should have identified—at the time it first alleged misappropriation of its trade secrets—exactly what trade secrets it contends Zilog misappropriated. To date, despite having more than two and a

half years to “confirm” its trade secrets and, therefore, Zilog’s alleged misappropriation, ASI admitted as recently as March 10, 2014, that it is still searching. To date, despite having the benefit of: (1) deposing Zilog designees and (2) obtaining more than 60,000 pages of Zilog’s documents, ASI has yet to identify its trade secrets, other than to refer Zilog to scores of documents produced by Sage. Simply put, ASI has not suffered prejudice and its rights have not been hampered. ASI’s motion to compel Zilog to reproduce its designees for further depositions should be denied.

**D. ASI’s Motion to Compel the Deposition of Rick White (or a Replacement Witness) to Be Examined as a Corporate Designee in Boise at Zilog’s Cost and Expense Should Be Denied.**

Finally, in Section C of its Argument, ASI seeks to compel Zilog to make Zilog’s designee and former employee Rick White available for deposition in Boise, without regard to Mr. White’s schedule or obligations to his current employer, or to designate and produce another corporate representative in his place. Notably, the topic for which Zilog has designated Mr. White is as follows:

9. Communications regarding ASI and/or its proprietary technologies, intellectual property or trade secrets, including, without limitation, *communications occurring or which occurred between Zilog and Lattice Semiconductor.*

(Emphasis added.)

Mr. White is both a former employee of Zilog and a current employee of Lattice Semiconductor. *See* Declaration of Rick White, filed April 18, 2014, at ¶¶ 2-3 (“White Dec.”). Thus, it would appear to be beneficial for all parties if Mr. White were to testify as to subject matter no. 9.

ASI does not appear to dispute this point. Rather, ASI asserts that Zilog and Mr. White, in attempting to reach a mutually agreeable date and location of Mr. White’s

deposition, have rendered Mr. White “unavailable.” ASI asserts that this Court should either order Zilog to identify and educate a separate corporate witness, or bear the sole cost and expense of bringing Mr. White to Boise, Idaho, at a time convenient for ASI without regard to Mr. White’s convenience.

**1. Neither Zilog nor Mr. White have ever intimated to ASI or this Court that Mr. White “refuses” to sit for deposition.**

Zilog respectfully submits that it has acted in good faith to fulfill its duty, pursuant to the rules of civil procedure, to identify and sit a corporate witness with the most knowledge as to a given topic—here deposition topic no. 9. As provided in Zilog’s Memorandum in Support of its Motion for Protective Order, filed April 18, 2014, if ASI would only work with Zilog and Mr. White to select a deposition date when Mr. White will be in the forum state, Mr. White will testify as to topic nine. As an alternative, Zilog and Mr. White have agreed to make Mr. White available to be deposed in Oregon. The fact that ASI opposes these options does not lead to the conclusion that Zilog “refuses” to produce Mr. White.

**2. The record does not support ASI’s contention that Zilog “properly bears the costs and expenses incurred in producing witnesses to be examined in Boise.”**

ASI admits in its briefing that there IS a general presumption that a corporate defendant should be deposed at his principal place of business.<sup>4</sup> See Pl. 4/18/14 Mem., at 13.

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<sup>4</sup> To date, no Idaho appellate court has addressed the presumption that a corporate defendant should be deposed at its principal place of business. However, it is a well-settled principle of law in Idaho that “[c]ontrol of discovery is within the discretion of the trial court.” *McCann v. McCann*, 152 Idaho 809, 821, 275 P.3d 824, 836 (2012), citing *Jen-Rath Co. v. Kit Mfg. Co.*, 137 Idaho 330, 336, 48 P.3d 659, 665 (2002). Where our Idaho appellate court has not yet addressed the issue, the Idaho Supreme Court has expressed its “preference for interpreting the Idaho Rules of Civil Procedure in conformance with the interpretation placed upon the same language in the federal rules.” See *Obendorf v. Terra Hug Spray Co.*, 145 Idaho 892, 897, 188 P.3d 834, 839 (2008); *Wait v. Leavell Cattle, Inc.*, 136 Idaho 792, 796, 41 P.3d 220, 224 (2001). In this case, Federal Rule of Civil Procedure 30(b)(6) is nearly identical to Idaho Rule of Civil Procedure 30(b)(6). Zilog therefore respectfully submits that this Court may properly interpret



ASI's contends, however, that the presumption has only been adopted by "some" courts, and that this presumption can be easily overcome. *Id.* Contrary to ASI's understatement, the truth is that since as early as 1970 the majority of federal courts—including Idaho's federal district court—recognize the ***prevailing presumption*** that the "deposition of a corporation by its agents and officers should ordinarily be taken at its principal place of business."<sup>5</sup>

Civil Discovery Standard 16(f) of the American Bar Association's Civil

Discovery Standards states:

Where Depositions Should Be Taken: Presumptions.

A defendant may take a plaintiff's deposition where the suit has been brought; *a plaintiff may take a defendant's deposition where the defendant resides or, if the defendant is a corporate or associational entity, where it has its principal place of business*; and the deposition of a nonparty witness may be taken where he or she resides or works. . . .

ABA CIVIL DISCOVERY STANDARDS (2004) at 29 (emphasis added). As the Comment to

Standard 16(f) states:

The plaintiff should normally attend his or her deposition in the place where the suit is pending on the theory that the plaintiff chose the forum. *Sonitrol Distributing Corp. v. Security Controls, Inc.*, 113 F.R.D. 160 (E.D. Mich. 1986). ***A defendant, who usually has had no role in deciding where the suit was filed, should normally be allowed to have his or her deposition taken where he or she resides or works.*** *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979) (***The deposition of a corporation "should ordinarily be taken at its principal place of business,"***

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Idaho Rule of Civil Procedure 30(b)(6), including the prevailing presumption that a corporate defendant will be deposed where it has its principal place of business, in conformance with the interpretation placed upon the same language in the federal rules.

<sup>5</sup> See *Grey v. Cont'l Mktg. Assocs.*, 315 F. Supp. 826, 832 (N.D. Ga. 1970) ("[C]ourts presume that a defendant's deposition will proceed at his or her place of residence, business, or employment."); *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979); see also *Dagen v. CFC Grp. Holdings, Ltd.*, No. 00-CV5682, 2003 WL 21910861, at \*2, 2003 U.S. Dist. LEXIS 13859, at \*6 (S.D.N.Y. Aug. 11, 2003).

*especially when . . . the corporation is the defendant.["]*

8 C. Wright & A. Miller, Federal Practice & Procedure § 2112 at 410 (1970)[.]”); *Pinkham v. Paul*, 91 F.R.D. 613, 615 (D. Me. 1981); *but see Dollar Sys., Inc. v. Tomlin*, 102 F.R.D. 93, 94 (M.D. Tenn. 1984) (defendant that contractually agreed to the forum cannot complain about having to give a deposition there).

Depositions of nonparty witnesses also normally should be taken where they reside or do business. *See* 8A Charles Alan Wright et al., Federal Practice and Procedure § 2112 (2d ed. 1994). While the parties are encouraged to agree on a reasonable place to take a deposition, the normal rule is that, subject to the basic principles described above, the examining attorney is allowed to pick the site, which is often his or her own office.

(Emphasis added.) Likewise, West’s Federal Civil Rules Handbook states:

#### **General Rules for Deposition Location**

The court has discretion to control the location of a deposition. In general, however, plaintiffs will be required to travel to the district where the suit is pending for their depositions, whereas *defendants can have their depositions taken where they work or live. Also, in general, the deposition of a corporation occurs at its principal place of business.* These general principles are, of course, subject to extenuating circumstances, such as a plaintiff who is too sick to travel.

WEST’S FEDERAL CIVIL RULES HANDBOOK (2013 ed.) at 824 (footnotes and citations omitted)

(emphasis added).

This presumption is a balance to two competing factors: the fact that noticing parties have discretion where to set depositions with the Court’s inherent power to control discovery and grant a protective order designating a different location. *See Philadelphia Indem. Ins. v. Fed. Ins. Co.*, 215 F.R.D. 492, 495 (E.D. Pa. 2003) (citing several cases).

“This presumption is based on the concept that it is the plaintiff who brings the lawsuit and who exercises the first choice as to the forum.” *Tailift USA, Inc. v. Tailift Co., Ltd.*, No. CIV.A. 03-0196-M, 2004 WL 722244, at \*1 (N.D. Tex. Mar. 26, 2004), citing *Payton v. Sears, Roebuck & Co.*, 148 F.R.D. 667, 669 (N.D. Ga. 1993). “*This presumption satisfies the*

*Rule 26(c) requirement of good cause [for issuance of a protective order].” Id.* (emphasis added), citing *Chris-Craft Indus. Prods., Inc. v. Kuraray Co.*, 184 F.R.D. 605, 607 (N.D. Ill. 1999) (“[t]he purposes underlying the general rule that the depositions should proceed at the corporation’s principal place of business create a presumption that the corporation has good cause for a protective order.”). In fact, the authorities suggest that a defendant’s timely objection should be sustained absent an unusual circumstance. See *Grey v. Cont’l Mktg. Assocs.*, 315 F. Supp. 826, 832 (N.D. Ga. 1970). In considering the issue, courts have concluded that “[t]he convenience of counsel is less compelling than any hardship to the witnesses.” *Six W. Retail Acquisition v. Sony Theatre Mgmt. Corp.*, 203 F.R.D. 98, 108 (S.D.N.Y. 2001); see also *Morin v. Nationwide Fed. Credit Union*, 229 F.R.D. 362, 363 (D. Conn. 2005) (determining that plaintiffs’ reasons for requesting depositions in the forum state—the parties’ comparative financial situation and convenience to parties’ counsel—were “seemingly unremarkable”).

The legal authorities cited by ASI for its contention that the prevailing presumption can be easily overcome have no application here. Two of the five cases cited concerned the unique issue presented where the deponents at issue are foreign citizens. See *E.I. DuPont de Nemours & Co. v. Kolon Industries, Inc.*, 268 F.R.D. 45, 54-55 (E.D.Va. 2010) (concerning whether to require depositions take place in Korea or the Eastern District of Virginia), *Aerocrine AB v. Apieron Inc.*, 267 F.R.D. 105, 108 (D. Del. 2010) (denying plaintiff’s motion to compel location of depositions of foreign corporate defendants in the United States).

The holding in *South Seas Catamaran, Inc. v. Motor Vessel Leeway*, 120 F.R.D. 17 (1988), the third case cited by ASI, did not even address the prevailing presumption with respect to corporate defendants. That court addressed the appropriate location for deposition of the *plaintiff’s* corporate witnesses, adopting the generally recognized rule that “absent a showing

of financial hardship or inability to attend depositions in the forum, the corporate plaintiff is required to produce its agents or officers for depositions in the district in which plaintiff has instituted suit.” *Id.*, 120 F.R.D. 17, 21.

In *Armsey v. Medshares Mgmt. Servs., Inc.*, 184 F.R.D. 569, 571 (W.D. Va. 1998), which is the fourth case cited by ASI the Court ordered the deposition of defendant’s “officers” to occur in the forum district, concluding that it is likely that these officers often travel to and do business within the forum district. The court, however, rejected the notion that the company’s current or former employees should be forced to be deposed in the forum district. *Id.* (“I do not, however, believe that the facts of this case warrant forcing any of Medshares current or former employees, who do not live or work in this district, to travel to this district to submit to depositions. Rather, I conclude that the depositions of any other current or former employees of Medshares should occur in the district in which each person resides.”). Moreover, where a court has required corporate defendants to travel to the forum, it has required the plaintiff to bear the cost and expense. *See, e.g., Nat’l Cmty. Reinvestment Coal. v. NovaStar Fin., Inc.*, 604 F. Supp. 2d 26, 31 (D. D.C. 2009) providing .

Although the Court has determined that Anderson shall be deposed in Washington, D.C., the fact remains that *plaintiff* chose Washington as the forum for this action, presumably knowing full well that NovaStar Financial’s principal place of business was in Kansas City. In light of the fact that the Court is departing from the general rule — at plaintiff’s request — while also significantly reducing the overall costs of the deposition, it seems appropriate that plaintiff should bear the reasonable costs of Anderson’s travel and lodging. *See, e.g., Moore v. George A. Hormel & Co.*, 4 F.R.D. 15, 16 (S.D.N.Y. 1942)(ordering plaintiff to pay expenses when an in-forum deposition of corporate defendant was ordered, at plaintiff’s request, based in part upon location of counsel).

*Id.*

In any event, courts addressing the issue encourage the parties to work out a mutually-agreeable arrangement. *See e.g. Grey*, 315 F. Supp. at 832 (suggesting that plaintiff schedule “*to take depositions at a time when defendants will be in this state, if possible, but otherwise plaintiff must take any depositions he wishes at the defendants’ residence or place of business.*”) (emphasis added). Alternatively, the plaintiff may agree to pay or split the cost and fees of bringing the witness to the forum.

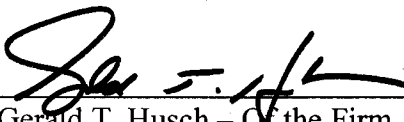
If none of these options is workable, federal courts—including our Idaho federal court—have ordered that the deposition be conducted by phone, by video conferencing, or even written interrogatory. *See Lancaster v. Amos*, 1:09-cv-00683-CWD, 2013 WL 2152125 (D. Idaho May 16, 2013) (“If the deposition goes forward, the parties shall confer and decide whether the deposition of Defendant Amos will take place in Dickinson, North Dakota, *or by telephonic or other reliable electronic means. . . .*”) (emphasis added).

#### IV. CONCLUSION

Based upon the foregoing, Zilog respectfully requests the Court to enter its Order denying ASI’s motion to compel and granting Zilog’s motion for protective order.

DATED this 28th day of April, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2014, I caused a true and correct copy of the foregoing **ZILOG, INC.'S MEMORANDUM IN OPPOSITION TO MOTION TO COMPEL** to be served by the method indicated below, and addressed to the following:

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Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

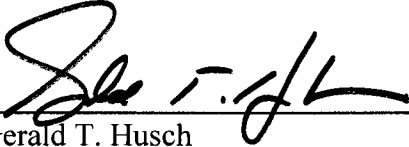
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☐ Hand Delivered  
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Gerald T. Husch

Stephen R. Thomas, ISB No. 2326  
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Attorneys for Defendant Zilog, Inc.

NO. \_\_\_\_\_ FILED \_\_\_\_\_ 458  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

APR 28 2014

CHRISTOPHER D. RICH, Clerk  
By DAYSHA OSBORN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DECLARATION OF  
CHERYL L. DUNHAM**

CHERYL L. DUNHAM, declares and states as follows:

1. I am a Senior Paralegal employed at the law firm Moffatt, Thomas, Barrett, Rock & Fields, Chartered ("Moffatt Thomas") and make this declaration upon my own personal knowledge. I have been employed by Moffatt Thomas since 1987.

2. Since Moffatt Thomas was retained by Zilog, Inc. to represent its interests in this matter, I have been involved handled various document productions in this matter.

3. After the March 4, 2014, deposition of Zilog's 30(b)(6) witness, David R. Staab, I received files from Zilog for supplemental production purposes. Zilog informed me that these documents were to be produced in response to a request made by plaintiff's counsel during Mr. Staab's March 4, 2014, deposition for documents contained in a "Shared Directory." All of the documents provided by Zilog subsequent to Mr. Staab's March 4, 2014, deposition were produced to plaintiff's counsel on March 21, 2014.

4. Documents that could be processed were given an identifying number and produced as Z033889 through Z035592. Documents that could not be processed were burned onto a separate disk and produced collectively as Z035593. I prepared an index to the files produced as Z035593, giving each file a unique number, identified as Z035593.001 through Z035593.135. Documents produced on March 21, 2014, were designated "CONFIDENTIAL" or "CONFIDENTIAL & ATTORNEYS' EYES ONLY," subject to the Protective Order, entered by the Court on January 26, 2013.

5. To date, I have been involved in the production of over 60,000 pages of documents or electronic files (identified as Bates Nos. Z000001-Z000174, Z000174.01-Z000174.22, Z000175-Z000201, Z000201.01-Z000201.12, Z000202-Z005923, Z005923.1-

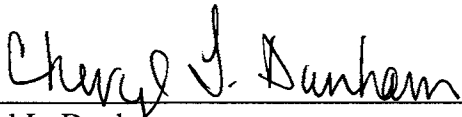


Z05923.18973, Z005924, Z005924.1-Z005924.8124, Z005925-Z035593, Z035593.001-

Z035593.135) by Zilog to plaintiff's counsel in response to plaintiff's requests for production.

I declare under penalty of perjury under the law of the state of Idaho that the foregoing is true and correct.

DATED this 28th day of April, 2014.

  
\_\_\_\_\_  
Cheryl L. Dunham

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2014, I caused a true and correct copy of the foregoing **DECLARATION OF CHERYL L. DUNHAM** to be served by the method indicated below, and addressed to the following:

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Pocatello, ID 83205-4229  
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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

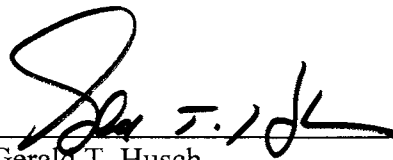
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*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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\_\_\_\_\_  
Gerald T. Husch

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 458

APR 28 2014

CHRISTOPHER D. RICH, Clerk  
By DAYSHA OSBORN  
DEPUTY

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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
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Plaintiff,

v.

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TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DECLARATION OF DAVID R. STAAB****DECLARATION OF DAVID R. STAAB - 1**

Client: 3323886.1

000892

DAVID R. STAAB declares and states as follows:

1. My name is David Staab. I have been employed by Zilog, Inc. ("Zilog") for approximately 15 years. I am currently employed by Zilog as its Vice President of R&D and MCU Architecture. I am making this declaration on the basis of my personal knowledge as a Zilog employee.

2. As Zilog's designated witness, I twice testified in this action by way of deposition on February 12, 2014, and March 4, 2014, in response to American Semiconductor, Inc.'s ("ASI") notices of deposition pursuant to Idaho Rule of Civil Procedure 30(b)(6).

3. As I indicated in my deposition taken by ASI's counsel on March 4, 2014, I produced documents from a project directory but, due to an oversight on my part, I did not produce documents from a shared directory, during the course of my initial efforts to respond to ASI's requests for production of documents directed to Zilog.

4. However, following my deposition on March 4, 2014, I searched the shared directory for documents responsive to ASI's requests for production of documents to Zilog. Many of the documents in the shared directory were duplicates of documents that I had caused to be produced to ASI from my project directory before my deposition on March 4, 2014, and I have determined that all of the responsive documents in the shared directory have been produced to Zilog's counsel for production to ASI in this matter.

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 25th day of April, 2014.

  
David R. Staab

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2014, I caused a true and correct copy of the foregoing **DECLARATION OF DAVID R. STAAB** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

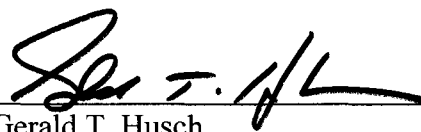
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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

NO. \_\_\_\_\_ FILED 458  
A.M. \_\_\_\_\_ P.M.

APR 28 2014

CHRISTOPHER D. RICH, Clerk  
By DAYSHA OSBORN  
DEPUTY

Case No. CV OC 1123344

**DECLARATION OF DAN EATON IN  
OPPOSITION TO MOTION TO  
COMPEL**

DAN EATON declares and states as follows:

1. I am now and have been since 2009, Vice President and General Counsel of the Defendant, Zilog, Inc. ("Zilog").

2. I am making this declaration on the basis of my personal knowledge as a Zilog employee and in opposition to Plaintiff American Semiconductor, Inc.'s motion to compel: (1) production of documents by defendant Zilog, Inc.; and (2) resumption of ASI's Rule 30(b)(6) deposition of Zilog filed herein on or about April 18, 2014 ("Pl. 4/18/14 Mem."), wherein ASI requests, in part, that this Court compel Zilog to produce certain license agreements existing between Zilog and three nonparties: CAST, Inc. ("CAST"); Cadence Design Systems, Inc. ("Cadence"); and Synopsys, Inc. ("Synopsys"). *See* Pl. 4/18/14 Mem., p. 9.

3. Zilog's license agreements with all three (3) third parties—Synopsys, Cadence and CAST—contain confidentiality and non-disclosure language that prohibits Zilog from disclosing the contents of the license agreements, absent the third parties' consent. There is a substantial issue as to whether Zilog may lawfully provide ASI's counsel with the software requested by ASI because Zilog does not own the requested software.

4. It is my understanding that ASI also sought to compel the production of Zilog's license agreements, directly from both Synopsys and Cadence *See* Pl. 4/18/14 Mem., p. 8.

5. Attached hereto as **Exhibit A** is a true and correct copy of Synopsys, Inc.'s Response to American Semiconductor, Inc.'s Subpoena Duces Tecum to Synopsys Inc., challenging the relevancy of such requests and asserting in part, that ASI's requests "seeks confidential information belonging to Synopsys and its customers subject to third party confidentiality agreements." Attached hereto as **Exhibit B** is a true and correct copy of the

Certificate of Service, dated April 2, 2014, identifying the parties served with Synopsys, Inc.'s Response to American Semiconductor, Inc.'s Subpoena Duces Tecum to Synopsys, Inc.

6. Because Synopsys, Cadence and CAST are the real parties in interest with respect to the confidentiality of the information ASI seeks, Zilog respectfully submits that ASI, in addition to sustaining its burden to establish the relevancy of the information sought, should be required to obtain copies of the license agreements directly from these third party owners and/or provide them with notice and an opportunity to be heard regarding ASI's motion to compel.

7. In filing this declaration, Zilog does not waive its rights to object to production of the Agreement to any party to this litigation or any other third party, except that Zilog will voluntarily provide copies of the agreements to the Court for the Court's review in camera at the Court's request.

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this <sup>28th</sup>~~29th~~ day of April, 2014.

  
\_\_\_\_\_  
Dan Eaton



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2014, I caused a true and correct copy of the foregoing **DECLARATION OF DAN EATON IN OPPOSITION TO MOTION TO COMPEL** to be served by the method indicated below, and addressed to the following:

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Pocatello, ID 83205-4229  
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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

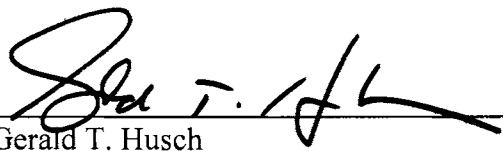
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Gerald T. Husch

# **EXHIBIT A**

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Telephone: (650) 584-5000  
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*In-house counsel for non-party Synopsys, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS, GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants Does I-X,

Defendants.

Case No. CV OC 112334

*The Honorable Thomas F. Neville*

**SYNOPSYS, INC.'S RESPONSE TO  
AMERICAN SEMICONDUCTOR,  
INC.'S SUBPOENA DUCES TECUM TO  
SYNOPSYS, INC.**

RELATED COUNTER ACTIONS

**SYNOPSYS INC.'S RESPONSES AND OBJECTIONS  
TO SUBPOENA DUCES TECUM**

Pursuant to Rules 34(b) and 45 of the Idaho Rules of Civil Procedure ("IRCP"), Synopsys, Inc. ("Synopsys") hereby responds and objects to the Subpoena dated March 20, 2014, served by American Semiconductor, Inc. (the "Subpoena"), as follows:

### GENERAL OBJECTIONS

1. Synopsys objects to the Subpoena in its entirety on the ground that the place and time for compliance are unreasonably burdensome to an out-of-state third party.

2. Synopsys further objects to the Subpoena in its entirety to the extent that service of process is inconsistent with Idaho's and California's enactments of the Uniform Interstate Depositions and Discovery Act.

3. Synopsys objects to the Subpoena in its entirety to the extent that it purports to impose obligations upon it that exceed those set forth under IRCP 26.

4. Synopsys objects to the Subpoena in its entirety to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

2. Synopsys further objects to the Subpoena in its entirety to the extent that it seeks discovery that American Semiconductor can obtain from one or more named parties in the above-captioned case, including but not limited to Zilog, Inc.

3. Synopsys objects to the Subpoena in its entirety on the ground that it seeks confidential information belonging to Synopsys and its customers subject to third party confidentiality agreements.

4. Synopsys objects to the definition of "AGREEMENT" on the ground that it is overbroad and unduly burdensome, particularly to the extent that it seeks "informal" or "oral" agreements.

## **SPECIFIC OBJECTIONS TO "DOCUMENTS TO BE PRODUCED"**

### **Request for Production No. 1:**

All AGREEMENTS that contain provisions in which SYNOPSYS grants ZILOG a license to make use of SYNOPSYS's software or software-related tools.

### **Synopsys' Objection to Request No. 1:**

Synopsys incorporates its General Objections as though set forth in full herein. Synopsys further objects to this Request on the grounds that the request: (1) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (2) is an improper attempt to seek from a non-party what American Semiconductor should first seek from a named party to the litigation; (3) is overly broad and unduly burdensome, particularly to the extent that it purports to require Synopsys to search for oral or informal agreements over a five year period of time. Synopsys further objects to this Request to the extent that it seeks information that is subject to third party confidentiality agreements. Synopsys further objects to this Request as vague, ambiguous and overbroad on the ground that American Semiconductor has not identified any Synopsys "software or software-related tools" that are relevant to the litigation. Accordingly, Synopsys further objects to this Request on the ground that it is unduly burdensome to require a non-party to search for an unidentified universe of potentially relevant agreements when the subject matter of the request has not been sufficiently defined.

### **Request No. 2:**

To the extent not covered in Request No. 1 above, all AGREEMENTS that reflect, constitute or contain restrictions or limitations as to authorized sites or locations wherein ZILOG may make use of the software or software-related tools referred to in Request No. 1.

### **Objection to Request No. 2:**

Synopsys incorporates its General Objections and Objections to Request No. 1 as though set forth in full herein. Synopsys further objects to this Request on the grounds that the request: (1) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (2) is an

improper attempt to seek from a non-party what American Semiconductor should first seek from a named party to the litigation; and (3) is overly broad and unduly burdensome, particularly to the extent that it purports to require Synopsys to search for oral or informal agreements over a five year period of time. Synopsys further objects to this Request to the extent that it seeks information that is subject to third party confidentiality agreements. Synopsys further objects to this Request as vague, ambiguous and overbroad on the ground that American Semiconductor has not identified any Synopsys "software or software-related tools" that are relevant to the litigation. Accordingly, Synopsys further objects to this Request on the ground that it is unduly burdensome to require a non-party to search for an unidentified universe of potentially relevant agreements when the subject matter of the request has not been sufficiently defined.

**Request No. 3:**

To the extent not covered in Request No. 1 above, all AGREEMENTS that contain provisions limiting, restricting or regulating the disclosure of confidential or commercially sensitive information.

**Objection to Request No. 3:**

Synopsys incorporates its General Objections and Objections to Request No. 1 as though set forth in full herein. Synopsys further objects to this Request on the grounds that the request: (1) seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence; (2) is an improper attempt to seek from a non-party what American Semiconductor should first seek from a named party to the litigation; (3) is overly broad and unduly burdensome, particularly to the extent that it purports to require Synopsys to search for oral or informal agreements over a five year period of time; and (4) seeks information that is subject to third party confidentiality agreements.

Dated: April 2, 2014

Synopsys, Inc.



---

David Pursley  
Shanée Nelson  
Ean Sewell

*In-house Counsel for non-party Synopsys, Inc.*

# **EXHIBIT B**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 2, 2014 I caused to be served a true and correct copy of  
**SYNOPTIS, INC.'S RESPONSE TO AMERICAN SEMICONDUCTOR, INC.'S SUBPOENA  
DUCES TECUM TO SYNOPTIS, INC.**, to the following individuals, by the method indicated below:

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COOPER & LARSEN CHARTERED  
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Pocatello, ID 83205-4229  
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Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany  
**Method:** Email: gary@cooper-larsen.com

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METCALF LAW OFFICE, PLLC  
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Ean Sewell



APR 28 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

John N. Zarian, ISB #7390  
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Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S OPPOSITION TO ZILOG,  
INC'S MOTION TO COMPEL**

52

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following memorandum in opposition to Zilog, Inc.'s Motion to Compel (filed April 18, 2014) (the "Motion to Compel").

### **INTRODUCTION**

In the Motion to Compel, defendant Zilog, Inc. ("Zilog") seeks an order from this Court compelling ASI to supplement its discovery responses with respect to five (5) issues. Zilog spends the bulk of its briefing on the first two issues relating to the definition of ASI's claimed trade dress and production of related records – however, those issues are *not* ripe for the Court's consideration at this time, because (a) Zilog failed to meet and confer on those two issues prior to filing its Motion to Compel, and (b) ASI has *already* clarified the nature and scope of its trade secrets, thus rendering these issues moot. Accordingly, Zilog is not entitled to any of the relief requested in connection with the first two issues addressed in its Motion to Compel.

Zilog's Motion to Compel is equally without merit as to the remaining three issues involving overbroad and unduly burdensome document requests that generally seek production of *all* of ASI's confidentiality or nondisclosure agreements with third parties, *all* of the employment agreements executed by ASI's past and present employees, and *all* documents evidencing ASI's ownership of all claimed trade secrets. In fact, ASI has appropriately responded to these facially overbroad requests. Therefore, as above, Zilog is not entitled to the relief it seeks with regard to these remaining three issues.

In rushing to file the instant motion with the Court, Zilog fails to place the subject discovery requests and the filing of the motion in proper context. An evaluation of the

circumstances surrounding the motion shows that the relief sought by the Motion to Compel is unwarranted and unnecessary. Thus, the Motion to Compel should be denied in its entirety.

### **ARGUMENT**

#### **A. ZILOG FAILED TO MEET AND CONFER AS TO THE FIRST TWO ISSUES RAISED IN THE MOTION TO COMPEL.**

By the pending Motion to Compel, Zilog seeks an order from the Court compelling discovery from ASI as to five (5) issues. [Zilog Motion, at p. 2; Zilog Memorandum, at p. 2]. While Zilog made an attempt to meet and confer on the third, fourth and fifth issues, it made *no attempt* to meet and confer on the first two issues.

Zilog seeks to enforce Interrogatory No. 3 in connection with the first issue, while the second issue relates to Requests for Production Nos. 1 to 6.

Interrogatory No. 3 states: "Please describe in as much detail as possible each and every one of the trade secrets, 'Inventions,' 'Secrets' and other protectable interests owned by ASI that are the subject of ASI's Second Amended Complaint." Requests for Production Nos. 1 to 6 seek production of records containing trade secrets, inventions and other protectable interests referenced in paragraphs 39, 96, 97, 123, 126 and 129 of the Second Amended Complaint.

While counsel for Zilog states that his office "made good faith attempts to resolve this discovery dispute without court action before filing Zilog's Motion to Compel," [Thomas Decl., ¶ 9], *those attempts were limited issues 3, 4 and 5* corresponding to Zilog's Requests Nos. 10, 12 and 15, respectively. [Zilog Motion, at p. 2]. Those attempts did not extend to the first two issues set forth in the motion to compel. [See Thomas Decl., Exs. D-F (attaching correspondence from Zilog complaining of "deficiencies" relating to ASI's responses to Requests for Production Nos. 9-12, 14-15 only, and ASI's correspondence addressing the issues raised)].

Accordingly, ASI submits that Zilog's Motion to Compel as to the first two issues is premature on the grounds that it fails to include the requisite certification that Zilog "has in good faith conferred or attempted to confer with [ASI] in an effort to secure disclosure without court action" as to those issues. I.R.C.P. 37(2). As to the first two issues, Zilog failed to do so. [Luvai Decl., ¶ 4]. Instead, Zilog rushed to file the instant motion.<sup>1</sup>

Accordingly, the Court need not consider the first two issues raised in the Motion to Compel unless and until Zilog meets and confers with ASI in good faith.

**B. ASI HAS PROPERLY ARTICULATED ITS PROTECTABLE TRADE SECRETS.**

**1. ASI's Articulation of its Trade Secrets is Sufficiently Specific; Therefore, Zilog's Requested Relief as to Interrogatory No. 3 Should be Denied.**

The gravamen of Zilog's Motion to Compel, and the issue to which Zilog devotes at least half of its briefing, is the erroneous assertion that ASI has failed to identify its claimed trade secrets. In truth, ASI has done so and would have highlighted that fact to Zilog had Zilog taken the required step of conferring on this issue prior to hurriedly filing a motion. Accordingly, the relief Zilog seeks with regard to any articulation of ASI's trade secrets is deficient on both procedural and substantive grounds, and should be denied as improperly sought and moot.

Prior to Zilog filing the instant motion, in answer to Interrogatory No. 11 as propounded in Zilog's Second Set of Discovery Requests to Plaintiff, ASI disclosed information expressly clarifying the nature and scope of its claimed trade secrets. This clarification was incorporated in

---

<sup>1</sup> As discussed below, Zilog's Motion to Compel was overtaken by (anticipated) clarifying disclosures made by ASI in response to a related subsequent interrogatory. Under the circumstances, it is apparent that any claimed necessity for filing the instant motion (particularly as to the first two issues) would have been fully or partially obviated and thus would have resulted in the elimination or significant narrowing of any issues genuinely in dispute.

the answer to Interrogatory No. 11 and was served in a timely manner by mail on April 17, 2014. Because Zilog does not acknowledge this discovery response, it is clear that Zilog filed the instant motion without the courtesy or benefit of awaiting and reviewing ASI's response to Interrogatory No. 11 – which considerably overlaps with Interrogatory No. 3, the discovery request that Zilog seeks to enforce as the first issue articulated in the instant motion.

Thus, substantively, ASI has already articulated its claimed trade secrets with requisite particularity. Pursuant to the Idaho Trade Secrets Act, the Code provides as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. . . .

Idaho Code § 48-801(5).

Here, ASI has claimed as proprietary trade secrets, information comprising its integration of various elements comprising an advanced microcontroller integrated circuit, as shown in the record Bates-labeled ASI002685. [Hackler, Dec., ¶ 7]. ASI's development and integration of the various elements and components identified in ASI002685 was successfully accomplished in an innovative and effective manner, giving ASI a commercial advantage in the marketplace. [*Id.*]. As further shown in ASI002685, the then-ASI employee engineers used ASI's proprietary advanced microcontroller integrated circuit design as an integral part of the design services they secretly provided to Zilog, without ASI's knowledge, authorization or consent. [*Id.*].

Underscoring its treatment of the microcontroller integrated circuit as a proprietary trade secret, ASI discloses information that may implicate the trade secrets it claims here pursuant to non-disclosure agreements and other obligations of confidentiality. [Hackler Decl., ¶ 6].

The advanced design comprising the microcontroller integrated circuit as identified in ASI002685 is properly a trade secret under the Idaho Trade Secrets Act given the Act's broad definition of a trade secret as including a compilation, method, technique or process, among other forms of trade secrets, provided the statutory prerequisites of (actual or potential) economic value and confidentiality are met. Idaho Code § 48-801(5). Here, ASI has appropriately and with specific detail and particularity articulated its protectable trade secrets.

Therefore, because ASI clarified the nature and scope of its claimed trade secrets *before* Zilog improperly sought relief from the Court, Zilog's reliance on the unreported *Jobscience, Inc. v. CV Partners, Inc.* order from the Northern District of California is unavailing. Further, any relief sought along the lines ordered by the *Jobscience* court is moot in light of ASI's clarification. Thus, even if Zilog had properly met and conferred, there is simply no need for the Court to "enter an [o]rder compelling ASI to describe, with specificity or reasonable precision" the claimed trade secrets at issue, because ASI did so *prior to* the filing of the instant motion.

**2. Contrary to Zilog's Assertions, There has Been No "Delay" on ASI's Part in the Articulation of its Claimed Trade Secrets in this Case.**

In an attempt to bolster its position, Zilog complains that "[d]espite the fact that ASI brought this litigation 28 months ago, ASI has failed to identify the alleged trade secrets at issue with specificity required. . . ." [Zilog Memorandum, at p. 12]. However, given the long procedural delays and highly technical nature of the subject matter at issue, there was no way until recently (in response to discovery) for ASI to articulate the exact nature and scope of its

*relevant* trade secrets transferred by the Sage defendants to Zilog. Indeed, these efforts have been hampered by *Zilog's* delay in providing relevant discovery. The inadequacy of Zilog's discovery responses is the subject of a motion to compel filed on April 18, 2014. Under the circumstances, the articulation of ASI's relevant trade secrets was delayed, in part, by Zilog's ongoing failure to disclose the nature and scope of confidential information misappropriated from ASI.

As the record reflects in this case, Zilog refused to comply with a subpoena served by ASI as early as March 2013. Further, even after Zilog formally became a defendant in 2013, ASI was forced to file a motion to compel before Zilog began to produce any records in October 2013. Even then, virtually all of Zilog's productions have been designated as AEO, thereby hampering and delaying ASI's evaluation of the scope of work done by the individual defendants for or on behalf of Zilog while still employed by ASI. Thus, in truth, Zilog's delays and untimely responses to ASI's discovery requests and its over-designation of records were the primary cause for any "delay" therefore, this argument as advanced by Zilog is not persuasive.

**3. Zilog is Not Entitled to Any Relief as to the Issues it Raises with Regard to its Requests for Production Nos. 1-6.**

Having identified its trade secrets with an appropriate level of particularity, under the circumstances, ASI has, in fact, pointed Zilog to records that specify the trade secrets at issue – *i.e.*, the advanced engineering design comprising the microcontroller integrated circuit as identified in ASI002685. Accordingly, as above, ASI's production of ASI002685-86, prior to Zilog's filing of its motion to compel, renders moot Zilog's requested relief that ASI produce documents "that, in ASI's view, do (rather than 'may' or 'might') contain any of the trade secrets, 'Inventions,' 'Secrets' and other protectable interests referenced in paragraphs 39, 96, 97, 123, 126 and 129 of ASI's second amended complaint." [Zilog's Memorandum, at p. 3].

**AMERICAN SEMICONDUCTOR, INC.'S OPPOSITION TO ZILOG, INC'S  
MOTION TO COMPEL - 6**

Therefore, notwithstanding Zilog's failure to confer on this issue and in light of ASI's production of ASI002685-86, there is no need for the Court to grant Zilog its requested relief as to this second issue. The requested relief is moot and should be denied.

**C. ASI HAS PRODUCED RECORDS SHOWING REASONABLE EFFORTS TO MAINTAIN THE CONFIDENTIALITY OF RELEVANT TRADE SECRETS.**

Zilog overreaches by asking this Court to compel ASI to produce: (a) "any and all documents and records that evidence any confidentiality or nondisclosure agreement between ASI and any other entity involving an ASI intellectual property, including but not limited to, design work, invention or discovery," [Request for Production No. 10]; and (b) "any and all employee agreements between ASI and any of its current or former employees including those agreements regarding the assignment of any invention, trade secret, or any other intellectual property," [Request for Production No. 12]. In support of this request, Zilog invokes in the authority of *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881 (2010) (involving the extent of measures taken by the trade secret claimant to guard the secrecy of the information) as a pretext for these requests for production. In fact, the requests are grossly overbroad.

**1. Request No. 10 is Grossly Overbroad and ASI's Production in Response to this Request is Sufficient Under the Circumstances.**

By its terms, Request No. 10 goes way beyond any trade secret claim, the claimed focus of Zilog's motion to compel, to encompass *any and all of ASI's "intellectual property."* Likewise, Request No. 12 seeks production of employee confidentiality agreements of all of ASI's employees since its inception relating to the assignment of *any and all inventions, trade secrets or intellectual property*. Accordingly, the Court need not grant Zilog its requested relief,



because the requests are so overbroad that they apparently seek records not pertinent in any way to ASI's misappropriation of trade secrets claim.

On a substantive level, Zilog is mistaken in suggesting that *Wesco*, or any other authority cited in the briefing for that matter, stands for the proposition that a plaintiff in a trade dress misappropriation action is obligated to produce each and every non-disclosure agreement executed by a third party or every employment agreement executed by its employees, past and present. Clearly, this level of granularity is not required in every case and does not, in any way, advance the process of discovery of facts relevant to ASI's efforts in maintaining the confidential nature of the *particular trade secret(s) at issue in this litigation*.

As Zilog acknowledges, ASI has produced the standard nondisclosure agreement with typical provisions restricting disclosure that its non-governmental customers execute in the ordinary course of business as a prerequisite for disclosure of any information that implicates the claimed trade secrets. The standard contract discloses the terms that govern the treatment of ASI's trade secret information by its customers and identifies reasonable steps employed by ASI in limiting disclosure of that information outside the company.

Furthermore, the identity and location of ASI's customers are not relevant to the question of whether ASI took reasonable steps to maintain confidentiality of its trade secrets, including those claimed here. This is particularly so here, given that Zilog considers ASI to be a *direct competitor* in, among other areas, the microcontroller design sphere. [Luvai Decl., Ex. B, Darraugh Dep., 27:13-29:20]. Despite its protestations to the contrary, the inference that Zilog solicited microcontroller design services from the employees of a direct competitor so as to obtain ASI's confidential microcontroller design know-how and trade secrets is inescapable.

**AMERICAN SEMICONDUCTOR, INC.'S OPPOSITION TO ZILOG, INC'S  
MOTION TO COMPEL - 8**

[See, e.g., Luvai Decl., Ex. C, Staab Dep., 173:14-175:14 (prior to hiring the ASI engineers, Zilog lacked critical design capabilities necessary to advance one of its projects and that Zilog hired the ASI engineers - without ASI's consent - to work that one project exclusively)]. Having improperly obtained ASI's trade secrets improperly by recruiting certain ASI employees who had knowledge of ASI advanced microcontroller design, Zilog is now intent on obtaining the identities of *all of ASI's customers*, regardless of any possible relevance. However, this information is simply not pertinent to any claims or defenses in this lawsuit.

Accordingly, there is nothing to be gained by compelling ASI to disclose each and every confidentiality or nondisclosure agreement entered into with third parties where the production of the standard contract that such parties execute suffices to show the nature and extent of such efforts. Therefore, because ASI's response to Request No. 10 is appropriate, under the circumstances, the Court should deny Zilog its request for an order seeking production of records that are neither relevant nor calculated to lead to discoverable evidence.

**2. Request No. 12 is Likewise Grossly Overbroad and ASI's Production in Response to this Request is Sufficient Under the Circumstances.**

In response to Request No. 12 seeking production of employee confidentiality agreements since ASI's inception, and as further Zilog acknowledges, ASI has produced confidentiality agreements as executed by key employees (and defendants) Mr. Roberts, Mr. Tiffany, Mr. Yearsley, Mr. Lloyd and Ms. Perryman. Further, ASI has produced non-disclosure agreements as executed by Mr. Roberts, Mr. Tiffany, Mr. Yearsley and Ms. Perryman.

These records confirm that the fruits of the labor performed by Mr. Roberts, Mr. Tiffany, Mr. Yearsley, Mr. Lloyd and Ms. Perryman as ASI employees in connection with the advanced microcontroller integrated circuit at issue here properly belonged to ASI, as was the case with

any other ASI employees who may have worked on the project. [See Hackler Decl., ¶ 11]. Obviously, confidentiality agreements signed by employees who did not have access to the trade secrets claimed in this lawsuit are *not relevant* to any claim or defense in this action. Accordingly, ASI's response to Request No. 12 is, as with Request No. 10, appropriate under the circumstances.

Thus, the Court should deny Zilog's request for an order seeking production of records that are neither relevant nor calculated to lead to discoverable evidence.

**D. ASI HAS PRODUCED RECORDS SHOWING ITS OWNERSHIP OF THE TRADE SECRETS AT ISSUE IN THIS LITIGATION.**

Finally, in seeking to enforce Request No. 15, Zilog requests an order compelling ASI to produce all records evidencing ownership of the claimed trade secrets to the extent it has not done so.

ASI has already produced records establishing that any contributions made by Mr. Lloyd, Mr. Tiffany, Mr. Roberts, Mr. Yearsley and Ms. Perryman, and each of them, to the advanced microcontroller integrated circuit at issue were properly owned by ASI. Further, all other development of the same technology was performed by ASI employees within the scope of their employment. [See Hackler Decl., ¶ 11].

Therefore, because ASI's response to Request No. 15 is complete, under the circumstances, and Zilog's requested relief on this issue should be denied.

**CONCLUSION**

For the foregoing reasons, the Court should deny Zilog's motion to compel in its entirety.

DATED: April 28, 2014.

PARSONS BEHLE & LATIMER

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of April, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

**REPLY IN FURTHER SUPPORT OF  
PLAINTIFF'S MOTIONS TO  
COMPEL: (1) PRODUCTION OF  
DOCUMENTS BY ZILOG; AND (2)  
RESUMPTION OF ZILOG'S RULE  
30(b)(6) DEPOSITION.**

ORIGINAL

Plaintiff American Semiconductor, Inc. ("ASI") respectfully submits the following reply memorandum in further support of its Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition (filed, April 18, 2014).

### **INTRODUCTION**

Having had ample time in which to comply fully with ASI's discovery requests, but having failed to do so, defendant Zilog, Inc. ("Zilog") now opposes ASI's pending motion to compel by seeking to deflect attention away from its mounting list of discovery failings.

However, Zilog does *not* dispute that it produced more than 20,000 pages of records on the very eve of the examination of its designated witnesses on March 4, 2014. Furthermore, Zilog concedes that it produced nearly 2,000 pages of additional records over two weeks after the March 4, 2014 deposition. Zilog gave no prior warning that these records would be produced.

In addition, lacking any defensible basis for its refusals to produce relevant licensing agreements, Zilog purports to enforce the interests of third parties even the third parties have effectively *disavowed* any such interests.

Perhaps most remarkably, Zilog argues that its untimely document productions and its refusals to produce clearly relevant records could not have prejudiced ASI in any way. Somehow, Zilog claims that it should be allowed to avoid any examination of its corporate designees in Boise regarding records untimely disclosed and/or improperly withheld records.

Finally, Zilog misconstrues certain case law and ignores the circumstances of this case in a futile bid to shift costs to ASI. In fact, as explained below, ASI has established not only that Boise is the appropriate location for Zilog's Rule 30(b)(6) deposition, but also that Zilog properly bears the costs of producing its witnesses to be examined in Boise.

**REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTIONS TO COMPEL: (1)  
PRODUCTION OF DOCUMENTS BY ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE  
30(B)(6) DEPOSITION - 1**

For the reasons set forth below and in ASI's moving papers, ASI submits that the Court should reject Zilog's arguments in opposition and grant ASI its requested relief.

### **ARGUMENT**

#### **A. ZILOG HAS FAILED TO JUSTIFY ITS IMPROPER REFUSALS TO PRODUCE DISCOVERABLE RECORDS PREVIOUSLY WITHHELD FROM ASI.**

##### **1. The "Shared Directory".**

In its opposition papers, Zilog represents that it has produced all records comprising the "Shared Directory" as identified by Mr. David Staab during the course of Zilog's Rule 30(b)(6) deposition. [Opposition, at p. 5]. To the extent that Zilog's representation is accurate, it is surprising and new because Zilog never made that representation to ASI despite repeated requests by ASI that Zilog produce those "Shared Directory" records.

Indeed, Zilog never specified or confirmed to ASI – in connection with or at any time after Zilog's claimed belated production of the "Shared Directory" on March 21, 2014 – that the records it produced on that date included the subject "Shared Directory" files.

Regrettably, ASI was forced to file the instant motion before Zilog made the essential claims now advanced in opposition regarding the status of its document productions.

As a consequence, ASI is only now reviewing the untimely March 21, 2014 production with respect to Zilog's representation that the "Shared Directory" is the source of the files produced. Under the circumstances, ASI reserves the right to seek appropriate relief from the Court if it so turns out that Zilog's production of the "Shared Directory" files is incomplete.

##### **2. The CAST, Synopsys and Cadence Licensing Agreements.**

Zilog does not provide any justification for its repeated refusals to produce relevant and discoverable licensing agreements it entered into with CAST, Inc. ("CAST"), Cadence Design

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Systems, Inc. ("Cadence") and Synopsys, Inc. ("Synopsys"). Instead, Zilog presents a straw man argument. In so doing, Zilog grossly mischaracterizes ASI's position and argues, rather incredibly, that ASI predicates its right to discovery of the licensing agreements upon the mere filing of the instant action. [Opposition, at p. 6]. Of course, this has never been ASI's position.

Nevertheless, in a bid to bolster its untenable argument, Zilog advances three other arguments that find no support in the record, namely, that: (a) ASI has failed to identify the trade secrets at issue; (b) the licensing agreements have no relevance to this lawsuit whatsoever; and, "[m]ore importantly," (c) third parties have precluded Zilog from disclosing the contents of the agreements on confidentiality grounds. ASI addresses these unmeritorious arguments in turn.

**a. ASI has Articulated its Trade Secrets.**

As set forth in American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s pending Motion to Compel (filed, April 28, 2014), ASI has appropriately articulated the trade secrets at issue in this litigation. Accordingly, this attenuated "justification" to Zilog's refusals to produce discoverable records in its possession, custody or control is inapposite.

**b. Zilog's Contention that the Agreements are "Irrelevant" is Misplaced.**

There is no merit to Zilog's contention that the Cadence, Synopsys and CAST licensing agreements are not discoverable because they are "irrelevant."

Of course, Rule 26 permits "broad discovery of any matter that is not privileged, even if it is inadmissible, so long as it is 'reasonably calculated to lead to the discovery of admissible evidence'" *Kirk v. Ford Motor, Co.*, 141 Idaho 697-703-04 (2005).

Contrary to Zilog's assertions, the relevance of the Cadence, Synopsys and CAST licensing agreements is not a matter of genuine dispute. Indeed, Zilog's "relevance" argument

boils down to one sentence in which Zilog states, in conclusory fashion, that “[it] is unclear what relevance – if any – the license agreements between Zilog and nonparties have on this litigation.” [Opposition, at p. 6]. This is hardly an adequate justification for Zilog’s attenuated claim that the Cadence, Synopsys and CAST licensing agreements are beyond the scope of any discovery.

In truth, the record in this case is replete with evidence establishing the relevance of the Cadence, Synopsys and CAST licensing agreements, including without limitation:<sup>1</sup>

- At least one of the individual defendants has testified in Sage’s Rule 30(b)(6) deposition that the then-ASI engineers *used* CAST, Cadence and Synopsys software to do design work for Zilog, without ASI’s knowledge or authorization;
- In deposition testimony, Mr. Staab has made numerous factual representations regarding the existence and content of the CAST license agreement – but Zilog has failed to produce that license;
- Zilog has apparently used the CAST “evaluation” license in violation of the terms governing that license agreement;
- Zilog’s Dan Eaton has previously testified (by way of declaration) that the Cadence agreement provides that Zilog “shall not sublicense, modify or permit third parties to use or otherwise access the Licensed Program or the Documentation,” [Declaration of Dan Eaton, filed Jan. 3, 2014]; however, Zilog apparently provided that very access to then-ASI engineers for the purpose of having Sage provide design services at artificially low prices; and,
- Zilog has made inaccurate representations – including statements made to the Court during the January 10, 2014 hearing on ASI’s prior motion to compel – to the effect that the only way then-ASI engineers were allowed to access to Cadence software was at Zilog’s Meridian facility; however, these assertions were flatly contradicted by sworn deposition testimony in this litigation.

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<sup>1</sup> ASI is surprised and disappointed that Zilog has sought to transform the straightforward “relevance” of the licensing agreements into a satellite issue. ASI did not expect this issue to be a matter of serious dispute, and therefore exercised discretion in the nature and amount of exhibits presented to the Court with the moving papers. However, ASI can provide additional documentation to the Court, upon request, in support of the foregoing factual assertions.

Thus, among other things, Zilog has introduced the issue of whether the Meridian site was the only "authorized" site from which the Sage engineers could lawfully use the Cadence software. (The same issue applies to software provided by Synopsys and CAST.) Having raised the issue, Zilog cannot genuinely argue that the licensing agreements governing the proper location of use for these various software tools are somehow not relevant to this action.

Moreover, these licenses are, at a minimum, calculated to lead to the discovery of admissible evidence because they were used in connection with the misappropriation of trade secrets and breaches of duty complained of, and because they tend to show whether and how the individual defendants collaborated with Zilog through the unauthorized use of third party software. As a consequence, (a) Sage and the individual defendants were able to provide below market-price services to Zilog; (b) Sage and the individual defendants were able to undercut ASI's market-based pricing for similar services; and, (c) Zilog was motivated to avoid and did avoid legitimate costs in having the Sage defendants use licenses under the table.

Accordingly, Zilog's "relevance" is without merit and should be disregarded.

**c. CAST, Cadence and Synopsys Have not Acted to Preclude Zilog from Producing the Agreements.**

Perhaps recognizing the limits of its other arguments, Zilog resistance to legitimate discovery is ultimately on purported third party confidentiality interests. [See Opposition, at p. 6 ("More importantly, because ASI's requests seek copies of contacts that third parties deem confidential and/or proprietary, ASI should be required to obtain these documents by issuance of third party subpoenas and, if necessary, a motion against the third parties to enforce its subpoenas.")].

Zilog's contentions in this regard are unpersuasive because no third party has asserted any confidentiality rights with regard to the subject licensing agreements. Furthermore, Zilog's argument is based on subjective (and selective) interpretations of contracts by Mr. Eaton to suit its discordant position. As shown below, Zilog's slanted interpretations are not persuasive.

**Cadence.** Zilog's argument that a confidentiality provision in the Cadence licensing agreement precludes it from producing that agreement, or otherwise divulging the contents thereof, is belied by Zilog's *actual* treatment of that contract during the course of this litigation. Indeed, in a bid to justify its refusal to properly designate its document production, Zilog submitted a declaration executed by Mr. Eaton in which *he quoted liberally* from the supposedly "confidential" Cadence license agreement. [Declaration of Dan Eaton, filed Jan. 3, 2014].

As part of the declaration, Mr. Eaton quoted from the Cadence license agreement – which Zilog has refused to produce on the spurious grounds that it is precluded from doing so based on third party confidentiality interests. In particular, Mr. Eaton testified variously that:

- "The Licensed Program... [is] the confidential and proprietary property of Cadence [Design Systems] or third parties from whom Cadence [Design Systems] has obtained rights."
- "Cadence [Design Sytems] grants and [Zilog] accepts, subject to this Agreement, a limited license to internally use each Licensed Program on the Designated Equipment at the Designated Site . . . ."
- "Each license granted hereunder authorizes only [Zilog's] Licensed Use of the Licensed Program(s) on specifically identified Designated Equipment at the specifically identified Designated Site."
- The "Designated Site" means "the specific address of [Zilog's] facility consisting of one or more buildings within a radius of one mile of where the Designated Equipment upon which the Licensed Programs are installed."
- Each "Licensed Program" is licensed to Zilog "solely for [Zilog's] internal purposes."

**REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTIONS TO COMPEL: (1)  
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- "Documentation" means "any and all information, written or otherwise, provided to [Zilog] by Cadence [Design Systems] describing the Licensed Program, its operation and matters related to its Licensed Use ... in published written material, on magnetic media or communicated by electronic means.
- The "Licensed Use" is restricted to "the purpose of assisting Zilog in the design, test, or manufacture of electronic elements, circuits, or systems."
- Zilog "shall not sublicense, modify, or permit third parties to use or otherwise access the Licensed Program or the Documentation."
- "[Zilog] may make a reasonable number of copies of a Licensed Program" but may do so "only for archival purposes and only for use as back-ups when the Licensed Program is not operational."
- "This Agreement ... may be terminated by Cadence [Design Systems] ... in the event of a material breach by [Zilog] of any provision of this Agreement where [Zilog] fails to correct such breach within 30 days of written notice .... "

If Zilog is correct in its assertion that the Cadence licensing agreement incorporates a confidentiality provision regulating the disclosure of the contents of the agreement, then Mr. Eaton's extensive disclosure of verbatim language from the agreement was a violation of the same provision that Zilog now seeks to enforce selectively. Zilog cannot have it both ways. Either the Cadence licensing agreement is confidential and Mr. Eaton is not at liberty to selectively disclose its contents for Zilog's advantage, or it is not and Mr. Eaton may quote from it at will but must produce the document in discovery. In other words, Zilog cannot disregard claimed third party confidentiality interests for purposes of disclosing favorable information and then enforce the same interests to prevent disclosure of unfavorable information.

Furthermore, Zilog cannot point to any statement or action on Cadence's part that would serve to suggest that Cadence seeks to enforce any confidentiality interests with regard to licensing agreement at issue. In fact, the opposite is true. As Zilog acknowledges, ASI served a subpoena on Cadence, to which Cadence responded. While Cadence's response is presently

**REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTIONS TO COMPEL: (1)  
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incomplete, Cadence has not asserted *any* confidentiality interests in seeking to preclude disclosure of any licensing agreement executed with Zilog. Thus, Zilog's statement that Cadence has asserted third party confidentiality interest is inaccurate and misleading.

Just as perplexing is Zilog's unsupported contention that ASI is somehow seeking to "circumvent" Cadence's objections to the production of the licensing agreements at issue. There is no such "circumvention" because Cadence did not lodge any objections whatsoever with regard to ASI's subpoena. Zilog points to no exchange with Cadence that would support its wild claim (because there is none). Cadence's failure to object to ASI's subpoena thus completely undermines Zilog's position that Cadence has somehow acted to preclude Zilog from producing the requested agreements. Cadence has not done so.

**Synopsys.** Zilog's arguments are equally lacking in merit as to the Synopsys license agreement. Zilog claims that Synopsys "strenuously objected" to the production of its license agreement with Zilog, [Opposition, at pp. 6-7]; however Zilog conveniently omits the fact Synopsys objected primarily on the grounds that it is a non-party to this action and that Synopsys assumed and expected ASI *could obtain a copy of the agreement at issue from Zilog*. While Synopsys did lodge a boilerplate objection generally invoking "third party" or customer confidentiality interests, that objection has no application here because Zilog is the "third party" or customer in the context of that objection.

In any event, when pressed concerning the actual bases for its objections, Synopsys confirmed that the actual grounds for its objections were: (a) "relevance;" and (b) its status as a non-party in light of Zilog's failure as a party to produce the requested licensing agreements. [See Luvai Supp. Decl., Ex. A]. Nowhere in Synopsys's clarifying letter does Synopsys invoke a

claim of third party confidentiality interests as the *primary* basis for its present refusal to comply with ASI's subpoena. [*Id.*]. Therefore, as with Cadence, Zilog's representation that Synopsys is invoking some nebulous confidentiality interests is inaccurate and misleading

**CAST.** Zilog's dubious representations regarding third party confidentiality interests apparently extend to CAST. As set forth in ASI's moving papers, the circumstances surrounding this issue are straightforward. First, Zilog produced a CAST "evaluation" license agreement in response to ASI's document requests. Second, Mr. Staab testified about the existence of a "final" license agreement that may differ from the "evaluation" agreement actually produced. Third, Zilog refused to produce the "final" license agreement in spite of ASI's repeated requests.

Interestingly, without regard to any third party confidentiality interests, Zilog *produced* a CAST "evaluation" license agreement, perhaps after concluding that the production might be beneficial to Zilog's case. However, as with the Cadence licensing agreement, now that Zilog is worried about the prospect of disclosing unfavorable evidence, it has refused to produce the "final" agreement. Zilog had no qualms about producing the "evaluation" agreement, without regard to third party confidentiality interests, but it now seeks to hide behind such alleged concerns in refusing to produce the "final" agreement. Such conduct is wildly inconsistent.

Furthermore, the suggestion that CAST "objected" to the production of the "final" agreement finds no support on the record. After Zilog produced the "evaluation" agreement with no objection from CAST, ASI simply sought to have Zilog complete its disclosure by producing the "final" agreement. In light of Zilog's incomplete production, ASI was under no obligation to (and did not) subpoena CAST in order to obtain records withheld as a result of Zilog's selective and partial production. Under the circumstances, ASI is mystified as to the source of Zilog's

contention regarding purported “objection(s)” lodged by CAST. As with Cadence and Synopsys, Zilog once again grossly overstates its case and points to no evidence that would support an inference that CAST ever “objected” to the production of the “final” agreement.

Thus, as discussed above, Zilog’s attempt to seek cover from Cadence, Synopsys and CAST as justification for its refusals to produce discoverable licensing agreements is misplaced.

**B. ZILOG HAS NOT OFFERED GOOD CAUSE AS TO WHY THE COURT SHOULD NOT COMPEL THE RESUMPTION OF ITS RULE 30(b)(6) DEPOSITION IN LIGHT OF THE UNTIMELY/WITHHELD PRODUCTIONS.**

Perhaps recognizing that it lacks any defensible grounds to oppose ASI’s request for a fair opportunity to examine Zilog corporate designees as to matters untimely disclosed and/or as to improperly withheld records, Zilog invokes its shopworn argument that ASI has yet to articulate the trade secrets at issue. [Opposition, at pp. 7-8]. Indeed, this misguided argument forms the primary basis for Zilog’s contention that the failure to resume its Rule 30(b)(6) deposition somehow will not prejudice ASI. [See *id.*].

In truth, it is beyond genuine dispute that ASI is entitled to resume the deposition of Zilog in order to examine its corporate designees, as appropriate, for several reasons.

*First*, even after conceding that it produced more than 20,000 pages of relevant records “only a day before Mr. Staab sat for deposition,” Zilog disingenuously contends that ASI’s preparation for Mr. Staab’s examination was not “unfairly and prejudicially hampered” in any way. [Opposition, at p. 7]. Of course, simply put, ASI was unable to review more than 20,000 pages of “Project Directory” records produced by Zilog on the afternoon of March 3, 2014 before taking Mr. Staab’s deposition on the morning of March 4, 2014. ASI has been prejudiced.



*Second*, by Zilog's own admissions, it produced records it contends constitute the "Shared Directory" *well after* Mr. Staab's March 4, 2014 examination. [Opposition, at p. 5 (stating that "[f]ollowing Mr. Staab's March 4, 2014 deposition, Mr. Staab 'searched the shared directory for documents responsive to ASI's requests for production of documents to Zilog.')" (quoting the Staab Declaration)]. Accordingly, ASI was prejudiced and is entitled to depose Zilog as to matters disclosed in the March 21, 2014 production of "Shared Directory" files.

Zilog seeks to downplay this issue by unpersuasively arguing that "[m]any of the documents in the shared directly were duplicates of documents [Mr. Staab] had caused to be produced to ASI from [the] project directory" the afternoon prior to Mr. Staab's March 4, 2014 examination. [Staab Decl., at ¶ 4]. In light of the discussion above establishing the prejudice to ASI from the untimely March 3, 2014 production, Zilog's invocation of that production does not advance its cause in any way. In fact, it bolsters ASI's position regarding prejudice.

*Third*, ASI is entitled to examine the appropriate Zilog corporate designees as to matters disclosed in the improperly withheld CAST, Synopsys and Cadence licensing agreements. In staking unreasonable positions regarding the discoverability of these licensing agreements, Zilog's (mis)calculation only served to suspend its Rule 30(b)(6) deposition pending production of the agreements. All ASI seeks with regard to the licensing agreements is a fair opportunity to examine Zilog corporate designees as to improperly withheld but later produced information.

For the foregoing reasons, nothing in Zilog's opposition counsels against the Court's exercise of discretion in ordering the resumption of Zilog's Rule 30(b)(6) deposition for the purposes of examining Zilog's corporate designees as to: (a) the "Project Directory" records; (b) the "Shared Directory" records; and (c) the withheld licensing agreements.

**REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTIONS TO COMPEL: (1)  
PRODUCTION OF DOCUMENTS BY ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE  
30(B)(6) DEPOSITION - 11**

**C. THE COURT SHOULD COMPEL RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION TO FACILITATE EXAMINATION OF RICK WHITE (OR HIS REPLACEMENT) IN BOISE.**

In the interest of brevity, ASI incorporates and expressly relies upon the arguments set forth in American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion for Protective Order (filed, April 28, 2014), which addresses this same issue. ASI's opposition memorandum establishes that Zilog has failed to establish good cause for its refusal to produce Mr. White to be examined in Boise as a Zilog corporate designee.

**D. ZILOG HAS FAILED TO JUSTIFY ITS ATTEMPTS TO SHIFT DEPOSITION COSTS ASSOCIATED WITH ITS PRODUCTION OF CORPORATE DESIGNEES TO BE EXAMINED IN BOISE.**

Zilog spends considerable time and effort in a futile effort to avoid costs it properly bears in producing its corporate designees to be deposed in Boise. Even conceding, *arguendo*, that there is a "presumption" that the examinations of corporate designees should ordinarily take place at the corporation's principal place of business, [Opposition, at p. 10], Zilog conveniently ignores the fact that this "presumption" is not one without exception. *See Sugarhill Records Ltd. v. Motown Rec. Corp.*, 105 F.R.D. 166, 171 (S.D.N.Y. 1985) (stating that a large corporation could not seriously contend that requiring one of the corporation's managing agents to travel to a location other than its principal place of business for a deposition imposed a severe burden). In this case, the dispositive is whether having the deposition take place in Boise would cause an undue burden or hardship on Zilog. Because Zilog has made no such showing, its appeals to an inapplicable "presumption" are unavailing.

Of course, Zilog's mischaracterization of a general "presumption" as constituting a hard and fast rule binding on all courts under all circumstances ignores the wide latitude given to trial

courts in determining the appropriate location of depositions. *See Calderon v. Experian Info. Solutions, Inc.*, 287 F.R.D. 629, 635 (D. Idaho 2012) *aff'd*, 290 F.R.D. 508 (D. Idaho 2013); *Sugarhill Records Ltd.*, 105 F.R.D. at 171 (location of deposition lies within court's discretion).

Accordingly, each motion is considered on its own facts and equities. *Tomingas v. Douglas Aircraft Co.*, 45 F.R.D. 94, 97 (S.D.N.Y. 1968). Although corporate defendants are (in some instances) deposed at the corporation's principal place of business, "[c]orporate defendants are *frequently* deposed in places other than the location of the principal place of business, especially in the forum, for the convenience of all parties and in the general interests of judicial economy." *Cadent Ltd. v. 3M Unitek Corp.*, 232 F.R.D. 625, 629 (C.D. Cal. 2005) (quoting *Sugarhill Records Ltd.*, 105 F.R.D. at 171) (emphasis added).

Tacitly conceding that the facts and equities in this case favor Boise as the appropriate location for the examination of its Rule 30(b)(6) witnesses, Zilog does not discuss (let alone apply) those facts or equities in its abstract and unhelpful discussion on this issue. [See Opposition at pp. 9-14]. This Court has *already* taken up this issue at an earlier hearing, and found that the weight of applicable factors and circumstances in this case supports an exercise of discretion to require Zilog to produce its corporate designees to be examined in Boise.

As set forth in ASI's moving papers, pertinent factors that Courts typically consider include: (a) location of counsel for the parties in the forum, (b) the number of corporate representatives a party is seeking to depose, (c) the likelihood of significant discovery disputes arising which would necessitate-resolution by the forum court; (d) whether the persons sought to be deposed often engage in travel for business purposes; and (e) the equities with regard to the nature of the claim and the parties' relationship. [Memorandum, at p. 14 (citing cases)].

**REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTIONS TO COMPEL: (1)  
PRODUCTION OF DOCUMENTS BY ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE  
30(B)(6) DEPOSITION - 13**


Unsurprisingly, Zilog cannot and does not challenge ASI's analysis of these factors. Instead of applying these factors to the current situation, Zilog engages in a sterile academic exercise whereby it merely purports to distinguish this case from various cited cases. Zilog's theoretical and unhelpful analysis does not alter the overriding conclusion that, in this case, Zilog has failed to proffer any evidence whatsoever that it has or will suffer any undue burden in producing its corporate witnesses to be deposed in Boise. Indeed, Zilog has failed to do so in spite of invitations from ASI that it apply the foregoing factors to the circumstances in this case as part of the meet and confer process preceding ASI's filing of the instant motion.

**CONCLUSION**

For all of the foregoing reasons, and for the reasons set forth in ASI's moving papers, ASI respectfully submits that the Court should grant its motion to compel

DATED: April 30, 2014.

PARSONS BEHLE & LATIMER

By   
\_\_\_\_\_  
John N. Zarian  
Kennedy K. Luvai  
Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

**REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTIONS TO COMPEL: (1)  
PRODUCTION OF DOCUMENTS BY ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE  
30(B)(6) DEPOSITION - 14**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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P.O. Box 4229  
Pocatello, ID 83205-4229  
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Facsimile: (208) 235-1182

*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

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*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
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*Attorneys for Defendant Zilog, Inc.*

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gth@moffatt.com

  
\_\_\_\_\_  
Kennedy K. Luvai

**REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTIONS TO COMPEL: (1)  
PRODUCTION OF DOCUMENTS BY ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE  
30(B)(6) DEPOSITION - 15**

John N. Zarian, ISB #7390  
Kennedy K. Luvai, ISB #8824  
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Facsimile: 208.562.4901  
jzarian@parsonsbehle.com  
kluvai@parsonsbehle.com

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. *456*

APR 30 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAOK  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

**SUPPLEMENTAL DECLARATION OF  
KENNEDY K. LUVAI IN SUPPORT  
OF PLAINTIFF'S MOTIONS TO  
COMPEL: (1) PRODUCTION OF  
DOCUMENTS BY ZILOG; AND (2)  
RESUMPTION OF ZILOG'S RULE  
30(b)(6) DEPOSITION**

*gn*

I, Kennedy K. Luvai, declare as follows:

1. I am duly licensed to practice law in Idaho and before this Court, and I am over eighteen years of age. I am an attorney with the law firm of Parsons Behle & Latimer, PLC, and one of the attorneys of record for plaintiff American Semiconductor, Inc. ("ASI") in the above-referenced action. I make this declaration based upon my own personal knowledge and, if called upon, could and would testify as to the truth of the statements contained herein.

2. I make this *supplemental* declaration in support of Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition.

3. Attached hereto as **Exhibit A** is a true and correct copy of a letter I received from Ean Sewell, in-house counsel at Synopsys, Inc. ("Synopsys"), on the evening of April 28, 2014 clarifying the primary grounds upon which Synopsys objected to the subpoena served upon it by my office and which sought production of the licensing agreements at issue in the instant motion.

I declare under penalty of perjury under the laws of Idaho that the foregoing is true and correct. Executed this 30th day of April, 2014, at Boise, Idaho.

  
\_\_\_\_\_  
Kennedy K. Luvai

**SUPPLEMENTAL DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF  
PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY  
ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION- 1**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
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*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

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Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
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*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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& FIELDS, CHTD.  
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*Attorneys for Defendant Zilog, Inc.*

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gth@moffatt.com



Kennedy K. Luvai

**SUPPLEMENTAL DECLARATION OF KENNEDY K. LUVAI IN SUPPORT OF  
PLAINTIFF'S MOTIONS TO COMPEL: (1) PRODUCTION OF DOCUMENTS BY  
ZILOG; AND (2) RESUMPTION OF ZILOG'S RULE 30(b)(6) DEPOSITION- 2**



## **EXHIBIT A**

**SYNOPSYS**

Synopsys, Inc.  
700 East Middlefield Road  
Mountain View, CA 94043-4039  
T 650.684.5000  
F 650.965.8637  
www.synopsys.com

April 28, 2014

Kennedy K. Luvai  
Parsons Behle & Latimer  
800 West Main Street, Suite 1300  
Boise, Idaho 83702

Re: *American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al*, Case No. CV OC 112334 (Ada County District Court)

Dear Mr. Luvai:

We respond to your letter dated April 16, 2014 regarding Synopsys' objections to ASI's Subpoena.

There is nothing apparent from the information you provided that leads us to believe that "the use of Synopsys-provided tools and the license agreements governing use of such tools are issues that were injected into [your] lawsuit." None of the information you provided demonstrates that Synopsys documentation is (1) relevant to the subject matter involved in the pending action or (2) related to a claim or defense of any party to the litigation as required by Rule 26(b)(1) of the Idaho Rules of Civil Procedure. Until such time as ASI articulates a legitimate explanation of the relevance of the requested documents, Synopsys is not under any obligation, independently or otherwise, to produce documents responsive to the Subpoena.

The fact that a completely unrelated third party, also located in California, responded to a similar subpoena makes no difference. ASI is not entitled to discovery from Synopsys unless it can establish that the discovery it seeks meets the Rule 26(b)(1) standard. The deposition transcript excerpts you provided fail to demonstrate any relevance of the requested information to ASI's case. At best, they demonstrate that Synopsys tools were mentioned during two depositions in your case. The mere mention of a Synopsys tool, however, does not automatically render any discovery regarding Synopsys' confidential agreements or any other Synopsys documentation relevant to your action.

We also disagree with your assertion that the Subpoena's document requests are "narrow." As noted in our objections, the Subpoena effectively requests the production of all Synopsys agreements, including oral and informal agreements, which it may have with Zilog and/or IXYS Corporation for a period of five (5) years. Without a better explanation as to the relevance and scope of your requests, Synopsys cannot even begin to search for any such oral or informal agreements. Such a request cannot reasonably be seen as "narrow" and is undeniably burdensome, particularly with respect to a non-party.

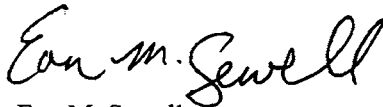
In requesting that ASI comply with its obligation to first seek discovery from a party to the litigation, Synopsys has asked ASI to do nothing more than what is required of ASI under relevant law. *See e.g., Cusumano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998) (recognizing that non-parties should not be required to subsidize litigation in which they have no stake in the outcome); *see also Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646 (9th Cir. 1980) (noting that restrictions in the scope of discovery are

broader when the target is a non-party). By its own terms, Rule 26(d) is directed to discovery between parties to the litigation and does not address the sequence of discovery as to non-parties. To the extent ASI believes that agreements between Synopsys and Zilog or IXYS are relevant to the litigation, there are mechanisms for ASI to obtain that discovery directly from a party to the litigation before burdening a non-party with such requests. Zilog's alleged nonresponsiveness to ASI's requests does not create any obligation in Synopsys to produce documents when ASI has failed and refused to comply with its initial obligation to explain why the information it has requested is relevant to the litigation in the first place.

Synopsys has been more than cooperative in ASI's discovery efforts, however, there is no requirement that Synopsys produce documents in response to a subpoena where the party seeking discovery has completely failed to explain why the information sought is relevant to its case, and has not taken sufficient steps to attain the discovery from a party to the litigation. As such, Synopsys stands on its objections to ASI's subpoena.

Please feel free to call me or Shanée Nelson if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink that reads "Ean M. Sewell". The signature is written in a cursive, flowing style.

Ean M. Sewell  
In-house counsel  
Synopsys, Inc.

cc: Shanée Y. W. Nelson  
Gerald T. Husch

NO. 10125 FILED  
A.M. 10:25 P.M.

MAY 14 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

RECEIVED

MAY 08 2014

Ada County Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

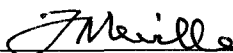
*The Honorable Thomas F. Neville*

**ORDER GRANTING STIPULATION  
RE: CASE MANAGEMENT  
DEADLINES**

This matter having come before the Court pursuant to the Court's Notice of Jury Trial Setting, filed on March 7, 2014, and good cause appearing therefore;

IT IS ORDERED that the Court hereby adopts the deadlines and timelines set forth in the Stipulation Re: Case Management Deadlines as executed by counsel for the parties as attached hereto as Exhibit A and incorporated herein by reference.

DATED this ~~14<sup>th</sup>~~<sup>14<sup>th</sup></sup> day of May, 2014.

  
\_\_\_\_\_  
Honorable Thomas F. Neville

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of May, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to:

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Pocatello, ID 83205-4229

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David Roberts, Gyle Yearsley and William Tiffany*

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LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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gth@moffatt.com

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER

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Telephone: 208.562.4900

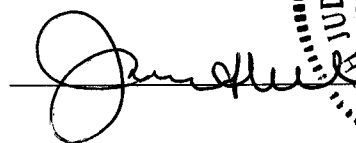
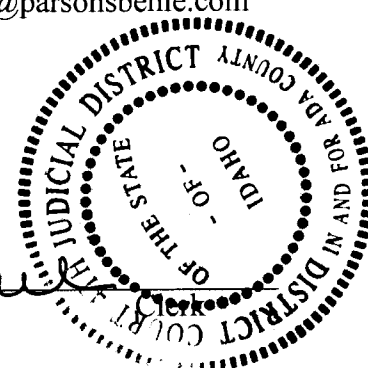
Facsimile: 208.562.4901

jzarian@parsonsbehle.com

kluvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

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kluvai@parsonsbehle.com

## **EXHIBIT A**

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Kennedy K. Luvai, ISB No. 8824  
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Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**STIPULATION RE: CASE  
MANAGEMENT DEADLINES**

**STIPULATION RE: CASE MANAGEMENT DEADLINES - 1**



Pursuant to the Court's Notice of Jury Trial Setting, filed on March 7, 2014, (the "Notice"), plaintiff American Semiconductor, Inc. and defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, William Tiffany and Zilog, Inc., by and through their undersigned counsel of record, stipulate to stipulate to the following deadlines as set forth herein.

As indicated during the status conference on March 6, 2014, the Court has set this matter for a ten (10) day jury trial to occur from December 2-5,<sup>1</sup> 9-12 and 15-16, 2014. The Court also set a pre-trial conference for November 14, 2014 at 9:00 a.m. and further ordered that the parties are to mediate no later than sixty (60) days prior to trial.

**A. EXPERT WITNESSES**

**(Plaintiff's Experts)**

1. 120 days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.
2. 120 days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.
3. 60 days before trial, defendants shall complete any depositions of the plaintiff's initial expert witnesses.

**(Defendants' Experts)**

4. 90 days before trial, defendants shall disclose each person defendants intend to call as an expert witness at trial and state the subject matter on which the witness is expected to testify.

---

<sup>1</sup> The Parties note that in the Notice of Jury Trial Setting, these dates are reflected as December 02 - 04, 09 - 12 & 15 & 16, 2014" for total of nine (9) court days (emphasis added). The Parties believe that the Court actually intended to set forth the dates as December 02 - 05, 09 - 12, and 15 & 16, 2014.

5. 90 days before trial, defendants shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses.

6. 30 days before trial, plaintiff shall complete any depositions of the defendants' initial expert witnesses.

**(Plaintiff's Rebuttal Experts)**

7. 60 days before trial, plaintiff shall disclose each person plaintiff intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by defendant.

8. 60 days before trial, plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding the rebuttal expert witnesses.

9. 30 days before trial, defendants shall complete any depositions of the plaintiff's rebuttal expert witnesses.

**B. LAY WITNESSES**

1. 90 days before trial, plaintiff shall disclose each person plaintiff intends to call as a lay witness at trial (excluding impeachment witnesses).

2. 90 days before trial, defendants shall disclose each person defendants intend to call as a lay witness at trial (excluding impeachment witnesses).

3. 75 days before trial, plaintiff shall disclose each lay witness (excluding impeachment witnesses) plaintiff intends to call at trial to rebut new information or issues disclosed or raised by the defendants.

4. 60 days before trial, all parties shall complete any depositions of lay witnesses.

**C. DEADLINES FOR INITIATING DISCOVERY**

1. 60 days before trial is the last day for serving interrogatories, requests for production, requests to permit entry upon land or other property, and requests for admission.

2. **60** days before trial is the last day for filing motions for a physical or mental examination.

**D. DEADLINE FOR SUPPLEMENTAL RESPONSES TO DISCOVERY**

1. **60** days before trial, all parties must serve any supplemental response to discovery required by Rule 26(e) of the Idaho Rules of Civil Procedure.

**E. PRETRIAL MOTIONS**

1. **150** days before trial is the last day to file motions to add additional parties to the lawsuit.

2. **150** days before trial is the last day to file a motion to amend the claims between existing parties to the lawsuit, including to add a claim for punitive damages.

**F. MOTIONS FOR SUMMARY JUDGMENT**

1. All motions for summary judgment must be filed at least **91** days before trial and heard at least **60** days before trial.

**G. TRIAL SETTING:**

1. By court order, his case has been set for a **10 day jury trial** to occur from December 2-5, 9-12 and 15-16, 2014.

**H. MEDIATION:**

1. By court order, mediation is to occur at least **60** days prior to trial.

2. Unless otherwise agreed in writing between the parties, the cost of mediation shall be equally divided between the parties.

The Parties reserve the right to amend this stipulation by agreement of all the Parties, subject to Court approval. Further, each party reserves the right to seek amendment hereof by Court order, and to request further status conferences for such purpose, in accordance with I.R.C.P. 16(a) and 16(b).

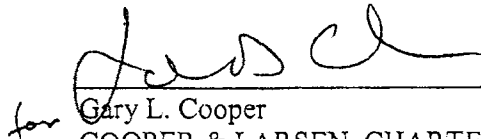
IT IS SO STIPULATED.

DATED this 7<sup>th</sup> day of May, 2014.



John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

DATED this 7<sup>th</sup> day of May, 2014.



for Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
*Attorneys for Defendants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley, and William  
Tiffany*

DATED this \_\_\_ day of May, 2014.

Gerald T. Husch  
Stephen R. Thomas  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
*Attorneys for Defendant Zilog, Inc.*

The Parties reserve the right to amend this stipulation by agreement of all the Parties, subject to Court approval. Further, each party reserves the right to seek amendment hereof by Court order, and to request further status conferences for such purpose, in accordance with I.R.C.P. 16(a) and 16(b).

IT IS SO STIPULATED.

DATED this \_\_ day of May, 2014.

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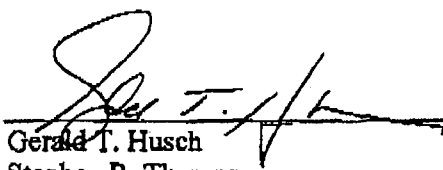
John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

DATED this \_\_ day of May, 2014.

---

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
*Attorneys for Defendants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley, and William  
Tiffany*

DATED this 7 day of May, 2014.



---

Gerald T. Husch  
Stephen R. Thomas  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
*Attorneys for Defendant Zilog, Inc.*

STIPULATION RE: CASE MANAGEMENT DEADLINES - 5

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7<sup>th</sup> day of May, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
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Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
Email: gary@cooper-larsen.com  
barbie@cooper-larsen.com

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*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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☒ Facsimile  
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Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
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*Attorneys for Defendant Zilog, Inc.*

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gth@moffatt.com

  
\_\_\_\_\_  
Kennedy K. Luvai

**PARSONS  
BEHLE &  
LATIMER**

960 Broadway Avenue, Suite 250  
Boise, Idaho 83706  
Telephone 208.562.4900  
Facsimile 208.562.4901

A Professional  
Law Corporation

Kennedy K. Luvai  
Registered Patent Attorney  
Direct 208.562.4892  
KLuvai@parsonsbehle.com

**FACSIMILE COVER SHEET**

**DATE:** May 7, 2014

<b>TO:</b>	<b>FAX NO:</b>	<b>PHONE NO:</b>
Ada County Clerk Ada County Courthouse	(208) 287-6919 ✓ —	(208) 287-6900

<b>CC:</b>	<b>FAX NO:</b>	<b>PHONE NO:</b>
Gary L. Cooper/Barbie Cooper & Larsen Chartered	(208) 235-1182 ✓ —	(208) 235-1145
Russell G. Metcalf Metcalf Law Office, PLLC	(208) 337-4854 ✓ —	(208) 337-4945
Stephen R. Thomas Gerald T. Husch Moffatt Thomas Barrett Rock & Fields, Chtd.	(208) 385-5384 ✓ —	(208) 345-2000

<b>FROM:</b>	Kennedy K. Luvai	<b>PHONE:</b>	208.562.4892
<b>SENT BY:</b>	Vicky Glass	<b>PHONE:</b>	208.562.4860

CLIENT-MATTER NUMBER: 20575.001	
NUMBER OF PAGES WITH COVER PAGE: 8	ORIGINALS: NOT SENT

**RE:** American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, etc., et al.  
Ada County Case No. CV OC 112334

Please file attached Stipulation Re: Case Management Deadlines. The proposed Order will be hand delivered to the Court tomorrow, May 8, 2014, with self-addressed stamped envelopes.

Thank you.

CONFIDENTIALITY NOTICE: This communication is confidential and may also contain privileged attorney-client information or work product. It is intended only for the use of the addressee. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you may not use, distribute, or copy this communication. If you have received this in error, please immediately notify us by telephone at 208.562.4900 and destroy this copy. Thank you.

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**Sent:** Wednesday, May 07, 2014 5:01 PM  
**To:** Fax Center  
**Subject:** Fax delivered to 12082351182



M.T.

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The fax that you sent to 12082351182 through GreenFax transmitted successfully.

Time Stamp: Wed May 7 19:01:06 EDT 2014

Destination: 12082351182 (USA / Canada)

Pages: 8

Duration: 97 seconds

Cost: \$0.42

Account Balance: \$-9.17

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**Sent:** Wednesday, May 07, 2014 5:02 PM  
**To:** Fax Center  
**Subject:** Fax delivered to 12083374854



M.T.

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Time Stamp: Wed May 7 19:01:42 EDT 2014

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Pages: 8

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**Sent:** Wednesday, May 07, 2014 5:03 PM  
**To:** Fax Center  
**Subject:** Fax delivered to 12083855384



M.T.

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The fax that you sent to 12083855384 through GreenFax transmitted successfully.

Time Stamp: Wed May 7 19:03:25 EDT 2014

Destination: 12083855384 (USA / Canada)

Pages: 8

Duration: 181 seconds

Cost: \$0.42

Account Balance: \$-10.01

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**To:** Fax Center  
**Subject:** Fax delivered to 12082876919



M.T.

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Time Stamp: Wed May 7 19:03:54 EDT 2014

Destination: 12082876919 (USA / Canada)

Pages: 8

Duration: 236 seconds

Cost: \$0.42

Account Balance: \$-10.43

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6/17/14 JH

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 343

JUN 16 2014

CHRISTOPHER D. RICH, Clerk  
By JERI HEATON  
DEPUTY

John N. Zarian, ISB #7390  
Kennedy K. Luvai, ISB#8824  
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Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

**NOTICE OF SERVICE OF  
PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S SECOND  
SUPPLEMENTAL RESPONSE TO  
ZILOG, INC.'S INTERROGATORIES  
(NOS. 1-3)**

ORIGINAL

97

NOTICE IS HEREBY GIVEN THAT on June 13, 2014, Plaintiff American Semiconductor, Inc. ("ASI"), served **PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S SECOND SUPPLEMENTAL RESPONSE TO ZILOG, INC.'S INTERROGATORIES (NOS. 1-3)** as indicated below and on June 16, 2014 a copy of this Notice of Service was served by the methods indicated below and addressed to the following at the addresses shown below:

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COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
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Facsimile: (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
☐ Email: gary@cooper-larsen.com  
barbie@cooper-larsen.com

Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
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*Attorneys for Defendant Zilog, Inc.*

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☒ Facsimile  
☐ Email: srt@moffatt.com  
gth@moffatt.com

Russell G. Metcalf  
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*Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany*

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☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
☐ Email: rmetcalf@cableone.net

**NOTICE OF SERVICE OF PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S  
SECOND SUPPLEMENTAL RESPONSE TO ZILOG, INC.'S  
INTERROGATORIES (NOS. 1-3) - 1**

PARSONS BEHLE & LATIMER

By Kay Xwai  
John N. Zarian  
Kennedy K. Luvai  
*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

**NOTICE OF SERVICE OF PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S  
SECOND SUPPLEMENTAL RESPONSE TO ZILOG, INC.'S  
INTERROGATORIES (NOS. 1-3) - 2**

NO. \_\_\_\_\_  
FILED  
A.M. \_\_\_\_\_ P.M. 3:40

JUN 18 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ORDER REGARDING ZILOG, INC.'S  
MOTION TO COMPEL**

On May 2, 2014, the Court heard oral argument on Zilog, Inc.'s Motion to Compel dated and filed April 18, 2014, against Plaintiff American Semiconductor, Inc. ("ASI"). All

parties were represented at the hearing by counsel of record. Based upon the parties' memoranda and declarations filed in connection with the above motions, the oral argument of counsel, the findings made by the Court on the record at the hearing which are incorporated herein, and for good cause appearing therefore,

**IT IS HEREBY ORDERED** that Defendant Zilog, Inc.'s Motion to Compel dated and filed April 18, 2014, is **GRANTED IN PART**, as follows:

(1) With respect to Interrogatory No. 3 of Zilog's First Set of Discovery Requests to Plaintiff, ASI shall describe, with reasonable specificity, each and every trade secret or trade secrets owned by ASI that are the subject matter of this action, to the extent not previously disclosed;

(2) With respect to Requests for Production Nos. 1 through 6 of Zilog's First Set of Discovery Requests to Plaintiff, ASI shall produce any and all documents and records containing any of the trade secrets, "Inventions," "Secrets" and other protectable interests referenced in paragraphs 39, 96, 97, 123, 126 and 129 of ASI's Second Amended Complaint, to the extent such documents and records exist and have not been previously produced;

(3) With respect to Request for Production No. 10 of Zilog's First Set of Discovery Requests to Plaintiff, ASI shall produce any and all documents and records that evidence any confidentiality or nondisclosure agreement between ASI and any other entity involving any ASI intellectual property at issue in this case, including but not limited to, design work, invention or discovery;

(4) With respect to Request for Production No. 12 of Zilog's First Set of Discovery Requests to Plaintiff, ASI shall produce any and all employee agreements between ASI and any of its current or former employees who ever worked on the piece of intellectual



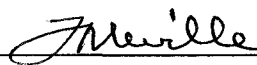
property at issue in this case in any capacity, including those agreements regarding the assignment of any invention, trade secret, or other intellectual property at issue in this case; and

(5) With respect to Request for Production No. 15 of Zilog's First Set of Discovery Requests to Plaintiff, ASI shall produce any and all documents and records evidencing ASI's claim of ownership of the trade secrets that are the subject matter of ASI's Second Amended Complaint and Demand for Jury Trial, to the extent such documents and records exist.

(6) ASI shall produce the information, documents and records required by this Order so that such information, documents and records are physically received by defense counsel on or before May 23, 2014.

This Order hereby incorporates by reference the Court's findings and reasons stated orally on the record during the hearing on May 2, 2014.

DATED this 18<sup>th</sup> day of June, 2014.

  
The Honorable Thomas F. Neville  
District Judge

## CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18 day of May, 2014, I caused a true and correct copy of the foregoing **ORDER REGARDING ZILOG, INC.'S MOTION TO COMPEL** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

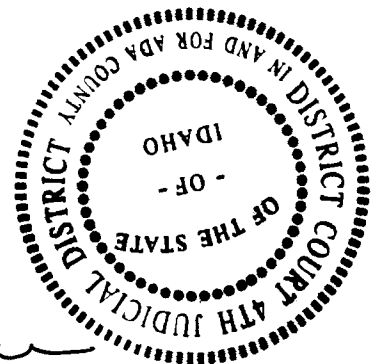
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Kennedy K. Luvai  
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*Attorneys for Defendant Zilog, Inc.*

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☐ Facsimile



  
Deputy Clerk

ORIGINAL

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 3:50

JUN 18 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344

*The Honorable Thomas F. Neville*

**ORDER RE: PLAINTIFF'S  
MOTIONS TO COMPEL: (1)  
PRODUCTION OF DOCUMENTS BY  
ZILOG; AND (2) RESUMPTION OF  
ZILOG'S RULE 30(b)(6)  
DEPOSITION**

On May 2, 2014, the Court heard oral argument on Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) resumption of Zilog's Rule 30(b)(6) Deposition (the "Motions").

All parties were represented by counsel at the hearing: John Zarian and Kennedy Luvai for American Semiconductor, Inc.; Gerald Husch and Andrea Rosholt for Zilog, Inc.; and Gary Cooper for Sage Silicon Solutions, LLC, Gyle Yearsley, David Roberts and William Tiffany.

Based upon memoranda, declarations and other papers filed in support of or in opposition to the Motions, oral argument of counsel at the hearing, the findings made by the Court on the record at the hearing, and for good cause appearing therefor,

IT IS HEREBY ORDERED that the motion to compel resumption of Zilog, Inc.'s Rule 30(b)(6) deposition upon oral examination with regard to deposition topic no. 9 is GRANTED for the reasons relied upon by the Court in denying Zilog, Inc.'s Motion for Protective Order and, thus, the Order Denying Zilog, Inc.'s Motion for Protective Order is hereby incorporated by reference herein as if fully set forth.

IT IS FURTHER ORDERED that American Semiconductor, Inc.'s motion to compel Zilog, Inc.'s production of licensing agreements as entered into with Synopsys, Inc., Cadence Design Systems, Inc. and CAST, Inc. (the "Licensing Agreements") is DENIED.

IT IS FURTHER ORDERED that American Semiconductor, Inc.'s motion to compel resumption of Zilog, Inc.'s Rule 30(b)(6) deposition upon oral examination is GRANTED IN PART as to matters disclosed in Zilog's Inc.'s document productions occurring on or after March 3, 2014 (the "Document Productions"), and DENIED IN PART as to the Licensing Agreements, and that Zilog, Inc.'s Rule 30(b)(6) deposition upon oral examination as to matters disclosed in the Document Productions shall resume in Boise on or before June 6, 2014.

In light of assertions and arguments made in papers filed in connection with the Motions and by counsel at the hearing as pertaining to Zilog, Inc.'s stated production of records comprising the "Shared Directory" and American Semiconductor, Inc.'s review of the same, the Court hereby elects not to address American Semiconductor, Inc.'s motion to compel Zilog, Inc.'s production of records comprising the "Shared Directory."

This Order hereby incorporates by reference the Court's findings and reasons stated orally on the record during the May 2, 2014 hearing.

DATED this 18<sup>th</sup> day of June, 2014. JMN

  
\_\_\_\_\_  
Honorable Thomas F. Neville

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of May, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
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David Roberts, Gyle Yearsley and William Tiffany*

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barbie@cooper-larsen.com

Russell G. Metcalf  
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LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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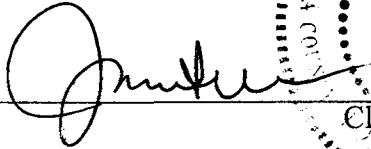
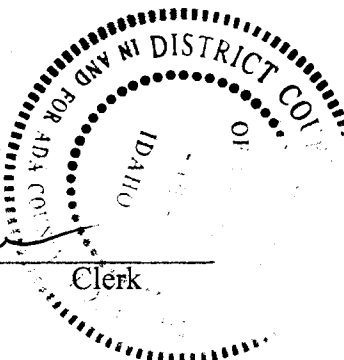
Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
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*Attorneys for Defendant Zilog, Inc.*

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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

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kluvai@parsonsbehle.com

  
Clerk  


Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
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FIELDS, CHARTERED  
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gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

NO. \_\_\_\_\_  
FILED 441  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

JUL 03 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAOK  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S MOTION FOR  
SANCTIONS**

COMES NOW the above-named defendant, Zilog, Inc. ("Zilog"), by and through its undersigned attorneys of record, and pursuant to Rule 37(b)(2) of the Idaho Rules of Civil Procedure, respectfully moves the Court to enter an Order sanctioning plaintiff American Semiconductor, Inc., ("ASI" or "plaintiff").

This motion is made on the grounds that ASI failed or refused to comply with the Court's oral rulings from the Bench at the hearing on Zilog, Inc.'s Motion to Compel on May 2, 2014, and the Court's subsequent written Order Regarding Zilog, Inc.'s Motion to Compel, because ASI intentionally failed or refused to take the following actions by May 23, 2014, and thereby caused prejudice to Zilog:

(a) ASI did not "describe with reasonable specificity, each and every trade secret or trade secrets owned by ASI that are the subject matter of this action, to the extent not previously disclosed;"

(b) ASI did not "produce any and all employee agreements between ASI and any of its current or former employees who ever worked on the piece of intellectual property at issue in this case in any capacity";

(c) ASI did not "produce any and all documents and records evidencing ASI's claim of ownership of the trade secrets that are the subject matter of ASI's Second Amended Complaint and Demand for Jury Trial, to the extent such documents and records exist."

Based upon the foregoing, Zilog requests the Court to enter its Order dismissing the Sixth, Eighth, Tenth and Eleventh Causes of Action of ASI's Second Amended Complaint and Demand for Jury Trial ("Second Amended Complaint"), insofar as those causes of action are



based upon ASI's theory that Zilog misappropriated one or more of ASI's alleged trade secrets.<sup>1</sup>

Alternatively, Zilog requests the Court to enter:

(a) an Order refusing to allow ASI to support the Sixth, Eighth, Tenth and Eleventh Causes of Action of ASI's Second Amended Complaint, insofar as those causes of action are based upon ASI's theory that Zilog misappropriated one or more of ASI's alleged trade secrets, or

(b) an Order taking as established the fact that Zilog did not misappropriate any of ASI's alleged trade secrets, or

(c) an Order prohibiting ASI from introducing into evidence (i) any evidence of the alleged trade secrets that ASI has failed or refused to identify with specificity, (ii) any evidence of the employee confidentiality agreements between ASI and Lorelli Hackler, Autumn Heppler, Brian Meek and Larry Crockett that ASI has failed or refused to produce, and (iii) any

---

<sup>1</sup> In the Sixth Cause of Action of ASI's Second Amended Complaint, ASI alleges a claim of violation of the Idaho Trade Secret Act ("ITSA") against Zilog and seeks monetary damages, disgorgement of any benefit received by Zilog and a royalty for the unauthorized use of ASI's trade secrets and/or other protectable interests. *See* Second Amended Complaint, p. 15, ¶ 98.

In its Eighth Cause of Action, ASI alleges a claim of unjust enrichment based on its theory that "Zilog has received a benefit in the form of ASI's trade secrets and other protectable interest as a direct result of its solicitation and/or acceptance of services from the Individuals and Sage." Second Amended Complaint, p. 16, ¶ 110.

In its Tenth Cause of Action, ASI seeks declaratory relief in the form of an assignment of rights in all of ASI's alleged intellectual property purportedly incorporated into Zilog products and, pursuant to ITSA, a royalty for all of ASI's alleged intellectual property purportedly incorporated into Zilog products. *See* Second Amended Complaint, p. 18, ¶¶ 125-126.

In its Eleventh Cause of Action, ASI seeks injunctive relief preventing Zilog "from utilizing or disclosing American Semiconductor's 'Inventions' or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such 'Inventions' or trade secrets." Second Amended Complaint, p. 19, ¶ 131.

evidence of the documents and records evidencing ASI's claim of ownership of the trade secrets that ASI has failed or refused to produce at all or failed or refused to produce in unredacted form.

This motion is based upon the record herein, including but not limited to:

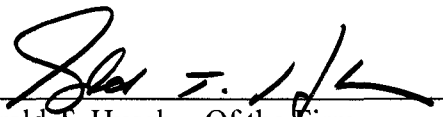
(a) Zilog, Inc.'s Motion to Compel Discovery, the Memorandum in Support of Zilog, Inc.'s Motion to Compel Discovery, and the Declaration of Stephen R. Thomas in Support of Zilog, Inc.'s Motion to Compel Discovery, all of which were filed herein on or about April 18, 2014;

(b) the Court's oral rulings from the Bench on May 2, 2014, and the Court's subsequent written Order Regarding Zilog, Inc.'s Motion to Compel, which Order was filed herein on or about June 18, 2014; and

(c) the Memorandum in Support of Zilog, Inc.'s Motion for Sanctions and the Declaration of Gerald T. Husch in Support of Zilog, Inc.'s Motion for Sanctions, both of which are filed contemporaneously with this Motion for Sanctions.

DATED this 3rd day of July, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of July, 2014, I caused a true and correct copy of the foregoing **ZILOG, INC.'S MOTION FOR SANCTIONS** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

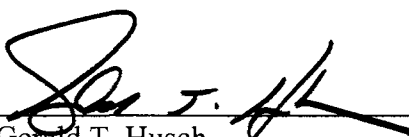
☒ U.S. Mail, Postage Prepaid  
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Facsimile (208) 345-4461  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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Kennedy K. Luvai  
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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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☐ Facsimile

  
Gerald T. Husch

NO. \_\_\_\_\_  
 A.M. \_\_\_\_\_ FILED P.M. 500

JUL 09 2014

CHRISTOPHER D. RICH, Clerk  
 By KATRINA THIESSEN  
 DEPUTY

*Noted  
 7-10-14*  
**ORIGINAL**

Stephen R. Thomas, ISB No. 2326  
 Gerald T. Husch, ISB No. 2548  
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 25332.0000  
 Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
 Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
 Idaho Corporation; ZILOG, INC., a Delaware  
 Corporation; DAVID ROBERTS; GYLE  
 YEARSLEY, WILLIAM TIFFANY, and  
 Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
 Idaho limited liability company; DAVID  
 ROBERTS, GYLE YEARSLEY, WILLIAM  
 TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
 Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DEFENDANT ZILOG, INC.'S NOTICE  
 OF ERRATA REGARDING ITS  
 MEMORANDUM IN SUPPORT OF  
 ZILOG, INC.'S MOTION FOR  
 SANCTIONS**

**DEFENDANT ZILOG, INC.'S NOTICE OF ERRATA REGARDING ITS  
 MEMORANDUM IN SUPPORT OF ZILOG, INC.'S MOTION FOR SANCTIONS - 1** Client:3467387.2

000973

Zilog, Inc., by and through its counsel of record, Moffatt, Thomas, Barrett, Rock & Fields, Chtd., hereby provides this notice of errata in the above-captioned matter. After Zilog, Inc. filed its Memorandum in Support of Zilog, Inc.'s Motion for Sanctions ("Zilog's Memo"), it came to the attention of undersigned counsel that there were errors contained therein. Specifically, undersigned counsel for Zilog, Inc. discovered the following:

1. At page 4, the filing date for the Declaration of Doug Hackler in Support of American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion to Compel, is incorrectly identified as April 27, 2014 ("4/27/14 Hackler Dec."). The correct filing date is April 28, 2014, and all references to the "4/27/14 Hackler Dec." should be to the "4/28/14 Hackler Dec."

2. At page 5, the citation to the "Hackler Dec." should be to the "4/28/14 Hackler Dec."

3. At page 21, Zilog's Memo incorrectly states:

*Id.*, at \*5. Citing *IDX Sys. Corp.*, the court noted that:

[R]eluctance to be specific is understandable; the more precise the claim, the more a party does to tip off a business rival to where the real secrets lie and where the rival's own development efforts should be focused. *Still, tools such as protective orders are available to make this process less risky, and unless the plaintiff engages in a serious effort to pin down the secrets a court cannot do its job.*"

*Id.*, at \*6, citing *IDX Sys. Corp.*, 285 F.3d 581, 84 (emphasis added). See also *Composite Marine Propellers, Inc. v. Van Der Woude*, 962 F.2d 1263, 1266 (7th Cir.1992) ("It is not enough to point to broad areas of technology and assert that something there must have been secret and misappropriated. The plaintiff must show concrete secrets.")

Zilog's Memo should have stated:


*Id.*, at \*5. In *IDX Sys. Corp.*, the court noted that:

[R]eluctance to be specific is understandable; the more precise the claim, the more a party does to tip off a business rival to where the real secrets lie and where the rival's own development efforts should be focused. *Still, tools such as protective orders are available to make this process less risky, and unless the plaintiff engages in a serious effort to pin down the secrets a court cannot do its job.*"

*IDX Sys. Corp.*, 285 F.3d 581, 583 (emphasis added). See also *Composite Marine Propellers, Inc. v. Van Der Woude*, 962 F.2d 1263, 1266 (7th Cir. 1992) ("It is not enough to point to broad areas of technology and assert that something there must have been secret and misappropriated. The plaintiff must show concrete secrets.")

DATED this 9th day of July, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch - Of the Firm  
Attorneys for Defendant Zilog, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9th day of July, 2014, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG, INC.'S NOTICE OF ERRATA REGARDING ITS MEMORANDUM IN SUPPORT OF ZILOG, INC.'S MOTION FOR SANCTIONS** to be served by the method indicated below, and addressed to the following:

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COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
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Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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( ) Hand Delivered  
( ) Overnight Mail  
(☒) Facsimile

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*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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( ) Hand Delivered  
( ) Overnight Mail  
(☒) Facsimile

  
Gerald T. Husch

NO.

A.M.

FILED  
P.M.

4

JUL 14 2014

CHRISTOPHER D. RICH, Clerk  
By KYLE MEREDITH  
DEPUTY

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
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25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DECLARATION OF RICK WHITE IN  
SUPPORT OF DEFENDANT ZILOG,  
INC.'S OPPOSITION TO PLAINTIFF'S  
MOTION TO AMEND SECOND  
AMENDED COMPLAINT TO ADD  
PRAYER FOR PUNITIVE DAMAGES**

DECLARATION OF RICK WHITE - 1

Client: 3469639 1

000977



RICK WHITE declares and states as follows:

1. I am making this declaration on the basis of my personal knowledge, in support of Zilog Inc.'s Opposition to Plaintiff's Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages.

2. I was formerly employed by Zilog. My employment with Zilog ended in 2011. At that time, my title was Vice President of Worldwide Operations.

3. During the term of my employment with Zilog, I became acquainted with Doug Hackler, David Roberts, Gyle Yearsley, William Tiffany and Russ Lloyd. However, I never supervised any of those individuals or their work and none of those individuals ever reported to me.

4. I encountered Doug Hackler on an airplane while I was flying between Boise, Idaho, and San Jose, California. At the time, I had just boarded the flight, I still had my coat on, and I was attempting to get settled in my seat. Mr. Hackler, who was seated about ten rows behind me, initiated a brief conversation with me.

5. At no time, either during that brief conversation or otherwise, did Mr. Hackler ever tell me that he or his company, American Semiconductor, Inc. ("ASI"), had hired or was employing David Roberts, Gyle Yearsley, William Tiffany, Russ Lloyd and/or Evelyn Perryman as an employee or that he or ASI were seeking to provide any design services to Zilog. If Mr. Hackler had indicated to me that he or ASI wished to provide design services, I would have told Mr. Hackler to contact David Staab because Mr. Staab, as Zilog's Vice President of R&D and MCU (Microcontroller Unit) Architecture, had responsibility for new product design and I never had any such title or responsibilities for Zilog.

**DECLARATION OF RICK WHITE - 2**

Client:3469639 1

000978

6. I have not spoken to Mr. Hackler since our brief conversation on the plane. At no time, did I ever represent ASI's capability to provide design services to Mr. Staab. Likewise, at no time did I ever tell Mr. Hackler:

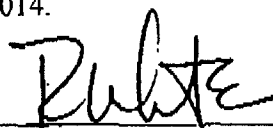
(a) that I had discussed ASI or its capabilities or its employment of designers with Mr. Staab,

(b) that Mr. Staab had told me that Zilog wasn't designing any new products or that no design work was needed, or

(c) that Mr. Staab had indicated that if Zilog ever needed design work, that ASI would be a very good resource to have.

I certify and declare under penalty of perjury pursuant to the law of the State of Oregon that the foregoing is true and correct.

DATED this 14th day of July, 2014.

  
Rick White

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July, 2014, I caused a true and correct copy of the foregoing **DECLARATION OF RICK WHITE IN SUPPORT OF DEFENDANT ZILOG, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO AMEND SECOND AMENDED COMPLAINT TO ADD PRAYER FOR PUNITIVE DAMAGES** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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STEWART TAYLOR & MORRIS PLLC  
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Boise, ID 83713  
Facsimile (208) 345-4461  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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John N. Zarian  
Kennedy K. Luvai  
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Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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Gerald T. Husch

Handwritten: *Notice Janet 7/28/14*

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 3:37

**AUG 19 2014**

CHRISTOPHER D. RICH, Clerk  
By KATRINA THIESSEN  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
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Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S MOTION FOR VOLUNTARY  
DISMISSAL OF ITS CLAIMS FOR  
MISAPPROPRIATION OF TRADE  
SECRETS, IMPROPER  
APPROPRIATION OF NAME,  
CONSUMER PROTECTION ACT,  
AND INJUNCTIVE RELIEF**

RELATED COUNTER ACTIONS

ORIGINAL  
000981

WHEREAS, plaintiff American Semiconductor, Inc. ("ASI") filed its original Complaint and Demand for Jury Trial in this action on December 2, 2011; and,

WHEREAS, ASI promptly served its Complaint upon David Roberts, Gyle Yearsley and William Tiffany (the "Individual Defendants") and Sage Silicon Solutions, LLC ("Sage"); and,

WHEREAS, ASI's initial Complaint asserted claims against the Individual Defendants and Sage for, among other claims, Idaho Trade Secrets Act Violation, Improper Appropriation of ASI's Name, Consumer Protection Act, and Injunctive Relief; and,

WHEREAS, ASI's claims against the Individual Defendants and Sage were predicated on the fact that they were directly competing with ASI in providing microcontroller design services; and,

WHEREAS, on December 8, 2011, ASI filed its Amended Complaint naming Zilog, Inc. ("Zilog") as a defendant and asserting claims for declaratory relief and injunctive relief against it; and,

WHEREAS, on December 18, 2011, ASI served discovery requests on the Individual Defendants and Sage seeking production of technical data and, in response, the Individual Defendants produced redacted or undecipherable records prompting ASI to file a motion to compel that was ultimately granted; and,

WHEREAS, the Individual Defendants and Sage responded months later by producing certain inconsistently labeled records and, at the apparent insistence of Zilog, designating certain of those records as CONFIDENTIAL AND ATTORNEY'S EYES ONLY ("AEO"); and,

WHEREAS, during the course of 2012, ASI actively sought to have the Individual Defendants and Sage produce technical data in their possession in a form that would facilitate

**AMERICAN SEMICONDUCTOR, INC.'S MOTION FOR VOLUNTARY DISMISSAL OF  
ITS TRADE SECRET MISAPPROPRIATION, IMPROPER APPROPRIATION OF NAME,  
CONSUMER PROTECTION ACT AND INJUNCTIVE RELIEF CLAIMS - 1**

ASI's evaluation of the nature and scope of any work the Individual Defendants and/or Sage did for Zilog; and,

WHEREAS, the Individual Defendants and Sage failed fully to respond and/or supplement their responses to ASI's discovery requests seeking production of certain design records, prompting ASI to file another motion to compel on May 31, 2013; and,

WHEREAS, on March 8, 2013, ASI served a subpoena on Zilog requesting the production of certain relevant design records; and,

WHEREAS, despite repeated requests (including an in-person meeting), Zilog failed or refused to produce any design records in response to ASI's duly served subpoena; and,

WHEREAS, on June 2, 2013, ASI filed a Second Amended Complaint and Demand for Jury Trial in which, in addition to the claims asserted against the Individual Defendants and Sage, ASI asserted good faith claims against Zilog for Idaho Trade Secrets Act Violation and Tortious Interference with Prospective Economic Advantage and Contract; and,

WHEREAS, on July 12, 2013, ASI served a request for production of documents upon Zilog incorporating the discovery requests previously served in the May 8, 2013 subpoena; and,

WHEREAS, on or about October 7, 2013, almost two years after ASI made its original request for production in this matter, Zilog responded to ASI's first request for production of documents by producing certain technical data designated AEO; and,

WHEREAS, ASI repeatedly requested that Zilog re-designate its blanket AEO designation in accordance with the Protective Order, so as to allow ASI to determine the extent of the usurpation of the work performed by ASI engineers; however, Zilog declined these requests, further delaying any technical review; and,

**AMERICAN SEMICONDUCTOR, INC.'S MOTION FOR VOLUNTARY DISMISSAL OF  
ITS TRADE SECRET MISAPPROPRIATION, IMPROPER APPROPRIATION OF NAME,  
CONSUMER PROTECTION ACT AND INJUNCTIVE RELIEF CLAIMS - 2**

WHEREAS, Zilog supplemented its production of documents from December 2013 through July 2014, designating virtually all of the technical data produced as AEO; and,

WHEREAS, the depositions of fact witnesses, including those with technical knowledge, were taken between February 2014 and July 2014; and,

WHEREAS, ASI retained a technical expert to review and evaluate the technical data produced by Zilog in light of the blanket AEO designations; and,

WHEREAS, ASI's retained expert reported that, based on his experience in the industry and his review of the technical data produced by the Individual Defendants, Sage and Zilog, it was apparent to him that certain design files had been removed or otherwise omitted from the repository at issue prior to production; and,

WHEREAS, it appears that, as of this date, full disclosure of the technical data has still not been made; and,

WHEREAS, the foregoing circumstances have hindered and/or delayed, and continue to hinder, ASI's ability fully to analyze and evaluate its trade secrets claims; and,

WHEREAS, given the state of these proceedings, ASI has elected to take steps to streamline this action for trial.

NOW THEREFORE, by and through its undersigned counsel of record, ASI hereby respectfully moves pursuant to I.R.C.P. 41(a)(2) to dismiss the following claims asserted in its Second Amended Complaint and Demand for Jury Trial, with each side to bear its own costs and attorney's fees:

(a) Idaho Trade Secrets Act Violation against all defendants (Sixth Cause of Action);

(b) Improper Appropriation of ASI's Name against the Individual Defendants and Sage (Seventh Cause of Action);

**AMERICAN SEMICONDUCTOR, INC.'S MOTION FOR VOLUNTARY DISMISSAL OF  
ITS TRADE SECRET MISAPPROPRIATION, IMPROPER APPROPRIATION OF NAME,  
CONSUMER PROTECTION ACT AND INJUNCTIVE RELIEF CLAIMS - 3**

(c) Consumer Protection Act Violation against the Individual Defendants and Sage  
(Ninth Cause of Action), and

(d) Injunctive Relief against the Individual Defendants, Sage and Zilog (Tenth Cause of  
Action).

DATED this 19th day of August, 2014.

PARSONS BEHLE & LATIMER

By Kennedy K. Luvai

John N. Zarian

Kennedy K. Luvai

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*



### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of August, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
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Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

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☐ Overnight Mail  
☒ Facsimile  
Email: gary@cooper-larsen.com  
barbie@cooper-larsen.com

Daniel W. Bower  
STEWART TAYLOR & MORRIS PLLC  
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*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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Stephen R. Thomas  
Gerald T. Husch  
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gth@moffatt.com

  
\_\_\_\_\_  
Kennedy K. Luvai

**AMERICAN SEMICONDUCTOR, INC.'S MOTION FOR VOLUNTARY DISMISSAL OF  
ITS TRADE SECRET MISAPPROPRIATION, IMPROPER APPROPRIATION OF NAME,  
CONSUMER PROTECTION ACT AND INJUNCTIVE RELIEF CLAIMS - 5**

NO. \_\_\_\_\_ FILED 2:40  
A.M. \_\_\_\_\_ P.M.

AUG 27 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ORDER ON ZILOG, INC.'S MOTION  
FOR SANCTIONS**

ORIGINAL

Zilog, Inc.'s Motion for Sanctions (the "Motion") came on for hearing on July 18, 2014, before the Court, the Honorable Thomas F. Neville, presiding. Plaintiff American Semiconductor, Inc. was represented by John N. Zarian and Kennedy K. Luvai of Parsons Behle & Latimer. Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany (Sage Defendants) were represented by Gary L. Cooper of Cooper & Larsen and Chad Bernards of Stewart Taylor & Morris. Defendant Zilog, Inc. was represented by Gerald T. Husch, Stephen R. Thomas and Andrea Rosholt of Moffatt Thomas Barrett Rock & Fields.

At the outset of the hearing, the Court recited the supporting papers for and against the motion filed by the parties, and the parties confirmed that all supporting papers had been received and filed with the Court.

Mr. Husch and Mr. Zarian then presented oral argument on the Motion. The Sage Defendants, through Mr. Cooper, joined in the Motion.

Based upon the memoranda, declarations and other papers filed in support of or in opposition to the Motion, oral argument of counsel at the hearing, the findings made by the Court on the record at the hearing, and for good cause appearing therefor,

**IT IS HEREBY ORDERED** that Zilog, Inc.'s Motion for Sanctions is **GRANTED IN PART** and **DENIED IN PART**, without prejudice as to the relief specifically sought by Zilog in the Motion, that of dismissal of certain of ASI's claims.

**IT IS FURTHER ORDERED** that ASI, as a sanction, must supplement its response to Zilog's Interrogatory No. 3 to describe with reasonable specificity each and every trade secret or trade secrets owned by ASI which are the subject matter of this action. Such supplementation shall occur by Monday, August 4, 2014, whether or not ASI has engaged or will engage an expert on the issue. If ASI fails to provide such disclosure by August 4, 2014, or if


such disclosure is not reasonably specific, Zilog may renew its motion for sanctions, and the Court will consider other remedies, up to and including dismissal of certain of ASI's claims.

**IT IS FURTHER ORDERED** that the Court will not consider Zilog, Inc.'s Motion for Sanctions with respect to ASI's Employee Confidentiality Agreements at this time because ASI has indicated that it will produce to Zilog Employee Confidentiality Agreements signed by Lorelli Hackler, Autumn Heppler, Brian Meek and Larry Crockett.

**IT IS FINALLY ORDERED** that the Court will not consider the issue of sanctions regarding ASI's redactions of certain documents and records as that issue was not brought to the Court prior to the Motion.

This Order hereby incorporates by reference, as if fully set forth herein, the findings, grounds and/or reasons stated by the Court on the record during the July 18, 2014 hearing as excerpted in the accompanying certified transcript attached hereto as Exhibit 1.

DATED this 27<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
The Honorable Thomas F. Neville  
District Judge

### CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of August, 2014, I caused a true and correct copy of the foregoing **ORDER ON ZILOG, INC.'S MOTION FOR SANCTIONS** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

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Boise, ID 83713  
Facsimile (208) 345-4461  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

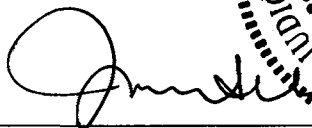
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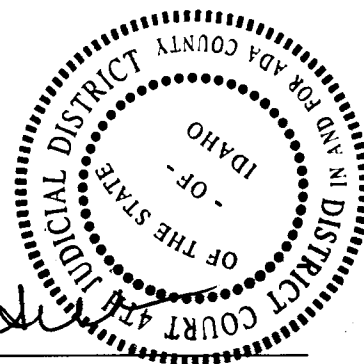
John N. Zarian  
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*Attorneys for Defendant Zilog, Inc.*

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☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
Deputy Clerk



# EXHIBIT 1

District Court of the Fourth Judicial District in and for the County of Ada

AMERICAN SEMICONDUCTOR, INC.,	)	Case No.
an Idaho Corporation,	)	CVOC-11-23344
	)	
vs.	)	
	)	
SAGE SILICON SOLUTIONS, LLC, and	)	Defendants.
Idaho Corporation; ZILOG, INC., a	)	
Delaware Corporation; DAVID ROBERTS;	)	
GYLE YEARSLEY, WILLIAM TIFFANY,	)	
and Defendants DOES I-X,	)	
	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

9:30 a.m., Ada County Courthouse, 200 W. Front Street  
on July 18, 2014, before  
Honorable Thomas Neville, District Court Judge.

Reported by  
Vanessa S. Gosney  
No. 752

COPY

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So the standard of review for motions for sanctions, as counsel well know, is essentially that a trial court has -- possesses the authority to sanction parties for failure to comply with discovery orders. IRCP Rules 16(i) and 37(b) both pertain. Permissible sanctions include the dismissal of the action as outlined in Idaho Rule of Civil Procedure 37(b)(2)(C). The imposition of sanctions for discovery violations, including dismissal of the action, is committed to the discretion of the trial court and is generally not overturned on appeal unless there is an abuse



10:41AM 1 of discretion.

10:41AM 2 And the case on point is that of  
10:41AM 3 *Devault* -- D-E-V-A-U-L-T -- vs. *Steven* -- spelled  
10:41AM 4 S-T-E-V-E-N -- *L. Herndon, a professional*  
10:41AM 5 *association*, at 107 Idaho 1 at page 2, a 1984  
10:41AM 6 Idaho Supreme Court case.

10:41AM 7 I believe that Defendant Zilog is  
10:41AM 8 correct that the Idaho Rules of Civil Procedure do  
10:41AM 9 not require a meet-and-confer before a motion for  
10:41AM 10 sanctions may be filed. So I will decline ASI,  
10:42AM 11 the Plaintiff's, invitation not to consider the  
10:42AM 12 motion on its merits. I think the Court is  
10:42AM 13 compelled to consider the motion on its merits.

10:42AM 14 As I said a moment ago, the imposition  
10:42AM 15 of sanctions for discovery violations including  
10:42AM 16 the potential sanction of dismissal is  
10:42AM 17 committed -- is a matter committed to the  
10:42AM 18 discretion of the trial court pursuant to the  
10:42AM 19 *Devault* case which I just cited.

10:42AM 20 However, when ordering the dismissal of  
10:42AM 21 a party's action, which is the most severe  
10:42AM 22 sanction, I believe, frankly, a trial judge's  
10:42AM 23 discretion is not unfettered. The Idaho Supreme  
10:42AM 24 Court enumerated factors which a district judge  
10:42AM 25 must expressly consider before determining whether

10:42AM 1 dismissal with prejudice is warranted.

10:43AM 2 The two primary factors are a clear  
10:43AM 3 record of delay and ineffective lesser sanctions  
10:43AM 4 which must be bolstered by the presence of at  
10:43AM 5 least one, quote, "aggravating," closed quote,  
10:43AM 6 factor, including: one, delay resulting from  
10:43AM 7 intentional conduct; two, delay caused by the  
10:43AM 8 plaintiff personally; or, three, delay causing  
10:43AM 9 prejudice to the defendant. Consideration of  
10:43AM 10 these factors must appear in the record in order  
10:43AM 11 to facilitate appellate review.

10:43AM 12 The case of *Ashby vs. Western Council*  
10:43AM 13 *Lumber Products and Industrial Workers* at 117  
10:43AM 14 Idaho 684, pages 686 and 687, is on point. It is  
10:43AM 15 an Idaho Supreme Court case from -- filed in 1990.

10:43AM 16 It held that dismissal was appropriate  
10:43AM 17 where there was a clear record of delay and where  
10:43AM 18 the trial court did impose or had imposed lesser  
10:44AM 19 sanctions when it ordered the appellants to comply  
10:44AM 20 with the discovery requests or face dismissal of  
10:44AM 21 the case with prejudice.

10:44AM 22 With regard to the factor of a clear  
10:44AM 23 record of delay and ineffective lesser sanctions,  
10:44AM 24 I believe that Zilog has at this point made such a  
10:44AM 25 showing. We find ourself two and a half years

10:44AM 1 into a case after allegations of misappropriation  
10:44AM 2 of trade secrets were first made and one month  
10:44AM 3 after this Court's order regarding Zilog's motion  
10:44AM 4 to compel was filed on June 18th, 2014. That is  
10:44AM 5 where we are timewise.

10:44AM 6 Prior to the hearing on Zilog's motion  
10:44AM 7 to compel, ASI had claimed that it had described  
10:45AM 8 with reasonable specificity the trade secrets at  
10:45AM 9 issue in this case, namely by providing a block  
10:45AM 10 diagram. This Court did not agree and granted the  
10:45AM 11 portion of Defendant Zilog's motion on that  
10:45AM 12 subject.

10:45AM 13 In its order, this Court ordered ASI  
10:45AM 14 to, quote, "describe with reasonable specificity  
10:45AM 15 each and every trade secret or trade secrets owned  
10:45AM 16 by ASI that are the subject matter of this action  
10:45AM 17 to the extent not previously disclosed," closed  
10:45AM 18 quote.

10:46AM 19 In response, ASI appears to have simply  
10:45AM 20 converted the block diagram into a narrative form  
10:45AM 21 and submitted that narrative to Zilog. In the  
10:46AM 22 papers in opposition to the motion for sanctions,  
10:45AM 23 ASI has argued that, quote, "ASI has described its  
10:45AM 24 asserted trade secret long before the discovery  
10:45AM 25 order was entered," closed quote.

10:46AM 1 And that, quote, "Zilog conveniently  
10:46AM 2 ignores the overriding proviso that the Court's  
10:46AM 3 order only applied to the extent that ASI trade  
10:46AM 4 secrets were not previously disclosed," closed  
10:46AM 5 quote. This is a statement in Plaintiff ASI's  
10:46AM 6 opposition paper at page 12.

10:46AM 7 If accepted, that argument by the  
10:46AM 8 plaintiff puts us right where we were before this  
10:46AM 9 Court's discovery order with ASI arguing that it  
10:46AM 10 has disclosed its trade secretes with reasonable  
10:46AM 11 specificity and with Zilog arguing that ASI had  
10:46AM 12 not. We have already covered that ground in the  
10:46AM 13 Court's view.

10:46AM 14 Prior to Zilog's motion to compel, ASI  
10:46AM 15 had not disclosed its trade secrets with  
10:46AM 16 reasonable specificity. That was the reason the  
10:46AM 17 court granted Zilog's motion to compel. Further,  
10:47AM 18 the Court finds that converting the same  
10:47AM 19 information from the format of a block diagram  
10:47AM 20 into a narrative format does not comply with this  
10:47AM 21 Court's order filed June 18th, 2014.

10:47AM 22 Further, the Court finds that with  
10:47AM 23 trial scheduled to begin on December 2nd, 2014,  
10:47AM 24 ASI's failure to describe its trade secrets, which  
10:47AM 25 are the subject of several of its claims, with

10:47AM 1 reasonable specificity has caused and will  
 10:47AM 2 continue to cause prejudice to the defendant so  
 10:47AM 3 long as such failure continues.  
 10:47AM 4 Even though the court has made findings  
 10:47AM 5 which would allow it to dismiss certain claims,  
 10:47AM 6 the remedy of dismissal is extreme. This court is  
 10:47AM 7 mindful that most of the documents provided to ASI  
 10:47AM 8 from Zilog in discovery have been designated  
 10:47AM 9 attorney eyes only.

10:48AM 10 Having reviewed the relevant portions  
 10:48AM 11 of the depositions submitted to this Court in  
 10:48AM 12 connection with this motion, the following passage  
 10:48AM 13 seems particularly relevant here. Quote:

10:48AM 14 Question by Mr. Cooper: "What part of  
 10:48AM 15 the PS10 ASIC do you believe that Roberts,  
 10:48AM 16 Yearsley, and Tiffany transferred to Zilog?"

10:48AM 17 Answer by Doug Hackler: "I think it  
 10:48AM 18 requires some expert analysis to really understand  
 10:48AM 19 that because I haven't been able to see  
 10:48AM 20 specifically the work that was done for Zilog.  
 10:48AM 21 It's being hid from us. But it does appear that  
 10:48AM 22 almost all aspects of the ASIC" -- A-S-I-C --  
 10:48AM 23 "implementation was provided to Zilog," closed  
 10:48AM 24 quote.

10:48AM 25 And that is really kind of the heart --

10:48AM 1 In some ways, the heart of this case. What is it  
 10:49AM 2 that is a trade secret? What is it that the Sage  
 10:49AM 3 defendants allegedly transferred to Zilog? What  
 10:49AM 4 were Zilog's capabilities before such alleged  
 10:49AM 5 transfer? And so on.

10:49AM 6 It appears that while discovery has  
 10:49AM 7 happened on at least some of these issues, the  
 10:49AM 8 analysis of such discovery has yet to take place,  
 10:49AM 9 and such analysis may be necessary for ASI to  
 10:49AM 10 properly be able to identify the alleged trade  
 10:49AM 11 secret or at least the portions of which --  
 10:49AM 12 portions which were allegedly transferred with any  
 10:49AM 13 specificity.

10:49AM 14 However, I do not believe that this  
 10:49AM 15 Court is willing, nor should it be willing until  
 10:49AM 16 the deadline for dispositive motions for Zilog,  
 10:49AM 17 for example, to file a motion for summary  
 10:49AM 18 judgment, for ASI to finally disclose the trade  
 10:49AM 19 secrets with specificity in opposition to the  
 10:50AM 20 motion. ASI is in violation of this Court's  
 10:50AM 21 discovery order now.

10:50AM 22 However, certain deadlines have already  
 10:50AM 23 been stipulated to in this case. Pursuant to the  
 10:50AM 24 stipulation re: case management deadlines filed  
 10:50AM 25 May the 8th, 2014, the Plaintiff shall disclose

10:50AM 1 their experts and state the subject matter on  
 10:50AM 2 which the witness is expected to testify 120 days  
 10:50AM 3 before trial. By this Court's count, that's -- I  
 10:50AM 4 will take Mr. Husch's date -- August the 4th,  
 10:50AM 5 2014.

10:50AM 6 In addition -- or at least  
 10:50AM 7 approximately August the 4th, 2014. In addition,  
 10:50AM 8 the stipulation provides that Plaintiff shall  
 10:50AM 9 disclose all information required by Rule 26(b)(4)  
 10:50AM 10 regarding expert witnesses. Thus, if the  
 10:51AM 11 plaintiff -- if the plaintiff were to retain an  
 10:51AM 12 expert -- apparently it has -- but if it were to  
 10:51AM 13 retain an expert concerning trade secrets, that  
 10:51AM 14 disclosure was already due by approximately  
 10:51AM 15 August the 4th under the stipulation existing.

10:51AM 16 In a careful exercise of this Court's  
 10:51AM 17 discretion, this Court will grant in part  
 10:51AM 18 Defendant Zilog's motion for sanctions. The  
 10:51AM 19 motion is denied without prejudice as to the  
 10:51AM 20 relief specifically sought by Zilog in its motion,  
 10:51AM 21 that of dismissal.

10:51AM 22 However, this Court will order as a  
 10:51AM 23 sanction for its failure to comply with this  
 10:51AM 24 Court's order of June 18th, 2014, that Plaintiff,  
 10:51AM 25 ASI, must supplement its response to Interrogatory

10:51AM 1 No. 3 of Zilog's first set of discovery requests  
 10:52AM 2 to plaintiff. ASI shall describe with reasonable  
 10:52AM 3 specificity each and every trade secret or trade  
 10:52AM 4 secrets owned by ASI which are the subject matter  
 10:52AM 5 of this action. Such supplementation shall occur  
 10:52AM 6 by Monday, August the 4th, 2014, whether or not  
 10:52AM 7 ASI has engaged or will engage an expert on the  
 10:52AM 8 issue.

10:52AM 9 If ASI fails to provide such disclosure  
 10:52AM 10 by August the 4th, 2014, or if such disclosure is  
 10:52AM 11 not reasonably specific, Zilog may renew its  
 10:52AM 12 motion for sanctions, and the Court will consider  
 10:52AM 13 other remedies, up to and including dismissal of  
 10:52AM 14 certain of ASI's claims.

10:52AM 15 The Court will not today consider the  
 10:53AM 16 motion for sanctions as it relates to the employee  
 10:53AM 17 confidentiality agreements, as I understand  
 10:53AM 18 Plaintiff, ASI, has agreed to produce those  
 10:53AM 19 documents.

10:53AM 20 The Court does note, however, that its  
 10:53AM 21 order required ASI to provide such documents for  
 10:53AM 22 employees who worked with the intellectual  
 10:53AM 23 property at issue in this case in any capacity.

10:53AM 24 It's hard to see how in a small firm  
 10:53AM 25 anybody is excluded from that in any capacity

10:53AM 1 language. It doesn't matter if they -- if they  
 10:53AM 2 are an owner, if they're -- whatever their  
 10:53AM 3 position is, even if perhaps the receptionist.  
 10:53AM 4 Thus, ASI withholding of agreements for employees  
 10:53AM 5 who worked on the project in a design capacity was  
 10:53AM 6 not in compliance with this Court's earlier order.

10:53AM 7 In addition, the Court will not  
 10:53AM 8 consider sanctions for ASI's redactions, as that  
 10:54AM 9 issue has not been brought to the Court prior to  
 10:54AM 10 this motion for sanctions.

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## REPORTER'S CERTIFICATE

STATE OF IDAHO       )  
                              )  
County of Ada         )

I, Vanessa S. Gosney, Official Court Reporter, County of Ada,  
State of Idaho, hereby certify:

That I am the reporter who took the proceedings had in the  
above-entitled action in machine shorthand and thereafter the same was  
reduced into typewriting under my direct supervision; and

That the foregoing reporter's transcript contains a full, true,  
and accurate record of the proceedings had in the above and foregoing  
cause, which was heard at Boise, Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand this  
28th day of July 2014.

---

Vanessa S. Gosney, Official Court Reporter  
CSR No. 752

AUG 17 2014

CHRISTOPHER J. SMITH, Clerk  
By KYLE MCDONNITH  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
PARSONS BEHLE & LATIMER  
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KLuvai@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**NOTICE OF ERRATA RE:  
AMERICAN SEMICONDUCTOR,  
INC.'S MOTION FOR VOLUNTARY  
DISMISSAL OF ITS CLAIMS FOR  
MISAPPROPRIATION OF TRADE  
SECRETS, IMPROPER  
APPROPRIATION OF NAME,  
CONSUMER PROTECTION ACT,  
AND INJUNCTIVE RELIEF**

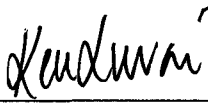
ORIGINAL

PLEASE TAKE NOTICE that plaintiff, American Semiconductor, Inc., by and through its undersigned counsel of record submits this Notice of Errata to make clarification of its Motion for Voluntary Dismissal of Its Claims for Misappropriation of Trade Secrets, Improper Appropriation of Name, Consumer Protection Act, and Injunctive Relief, which was filed on August 19, 2014.

It came to the attention of undersigned counsel that Paragraph (d) on page 4 incorrectly reads: (d) Injunctive Relief against the Individual Defendants, Sage and Zilog (Tenth Cause of Action). Therefore, paragraph (d) on page 4 is hereby corrected to read: (d) Injunctive Relief against the Individual Defendants, Sage and Zilog (Eleventh Cause of Action).

DATED this 20th day of August, 2014.

PARSONS BEHLE & LATIMER

By   
John N. Zarian  
Kennedy K. Luvai  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

**NOTICE OF ERRATA RE: AMERICAN SEMICONDUCTOR, INC.'S  
MOTION FOR VOLUNTARY DISMISSAL OF ITS CLAIMS FOR  
MISAPPROPRIATION OF TRADE SECRETS, IMPROPER  
APPROPRIATION OF NAME, CONSUMER PROTECTION ACT,  
AND INJUNCTIVE RELIEF - 1**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20th day of August, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
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David Roberts, Gyle Yearsley and William Tiffany*

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☐ Overnight Mail  
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LLC, David Roberts, Gyle Yearsley and William  
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\_\_\_\_\_  
Kennedy K. Luvai

**NOTICE OF ERRATA RE: AMERICAN SEMICONDUCTOR, INC.'S  
MOTION FOR VOLUNTARY DISMISSAL OF ITS CLAIMS FOR  
MISAPPROPRIATION OF TRADE SECRETS, IMPROPER  
APPROPRIATION OF NAME, CONSUMER PROTECTION ACT,  
AND INJUNCTIVE RELIEF - 2**

AUG-28-2014 15:57

PER-LARSEN

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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

**AUG 28 2014**

CHRISTOPHER D. RICH, Clerk  
By JAMIE MARTIN  
DEPUTY

**Gary L. Cooper - Idaho State Bar #1814**  
**COOPER & LARSEN, CHARTERED**  
 151 North Third Avenue, Second Floor  
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### *Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

**AMERICAN SEMICONDUCTOR, INC.,**  
an Idaho Corporation,

Plaintiff,

**vs.**

**SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X.**

**Defendants.**

CASE NO. CV-OC-1123344

**NOTICE OF OPPOSITION TO  
PROPOSED ORDER ON  
VOLUNTARY DISMISSAL**

### RELATED COUNTER ACTIONS

NOTICE OF OPPOSITION TO PROPOSED ORDER ON VOLUNTARY DISMISSAL - PAGE 1

# ORIGINAL

001001



COME NOW Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany and give notice that these Defendants object to the proposed order submitted by American Semiconductor, Inc. regarding their Motion for Voluntary Dismissal.

This motion is based on the following grounds:

The motion for voluntary dismissal does not completely eliminate all claims for Misappropriation of Trade Secrets in that American Semiconductor, Inc. has failed to dismiss it as a part of its Unjust Enrichment (§ 107) and its Declaratory Relief claim (§ 126); the dismissal is without prejudice and these Defendants believe that the dismissed claims should be dismissed with prejudice; and it is premature to determine whether any party should be awarded costs and attorney fees in connection with the dismissed claims because significant discovery was conducted regarding said claims and expert witnesses were retained to address said claims.

DATED this 28<sup>th</sup> day of August, 2014.

COOPER & LARSEN

  
\_\_\_\_\_  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of August, 2014, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702

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GARY L. COOPER

A.M. FILED P.M. 5

AUG 28 2014

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By JAMIE MARTIN  
DEPUTY

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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

Case No. CV OC 1123344

**NOTICE OF ZILOG, INC.'S  
OBJECTION TO AMERICAN  
SEMICONDUCTOR, INC.'S  
[PROPOSED] ORDER GRANTING  
AMERICAN SEMICONDUCTOR,  
INC.'S MOTION FOR VOLUNTARY  
DISMISSAL OF ITS CLAIMS FOR  
MISAPPROPRIATION OF TRADE  
SECRETS, IMPROPER  
APPROPRIATION OF NAME,  
CONSUMER PROTECTION ACT, AND  
INJUNCTIVE RELIEF**

**NOTICE OF ZILOG, INC.'S OBJECTION TO AMERICAN SEMICONDUCTOR,  
INC.'S [PROPOSED] ORDER GRANTING AMERICAN SEMICONDUCTOR, INC.'S  
MOTION FOR VOLUNTARY DISMISSAL OF ITS CLAIMS FOR  
MISAPPROPRIATION OF TRADE SECRETS, IMPROPER APPROPRIATION OF  
NAME, CONSUMER PROTECTION ACT, AND INJUNCTIVE RELIEF - 1**

Client:3538309.1

ORIGINAL 001004

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

COMES NOW Defendant Zilog, Inc. ("Zilog"), by and through its undersigned counsel, and states as follows:

1. On or about August 19, 2014, Plaintiff American Semiconductor, Inc. ("ASI") filed American Semiconductor, Inc.'s Motion for Voluntary Dismissal of Its Claims for Misappropriation of Trade Secrets, Improper Appropriation of Name, Consumer Protection Act, and Injunctive Relief ("ASI's Motion").

2. On an unknown date thereafter, ASI submitted to the Court ASI's [Proposed] Order Granting American Semiconductor, Inc.'s Motion for Voluntary Dismissal of Its Claims for Misappropriation of Trade Secrets, Improper Appropriation of Name, Consumer Protection Act, and Injunctive Relief ("ASI's Proposed Order").

3. ASI did not serve a notice of hearing with regard to ASI's Motion nor obtain a stipulation to entry of ASI's Proposed Order.

4. In ASI's Motion, ASI seeks voluntary dismissal of, *inter alia*, its Sixth Cause of Action (Idaho Trade Secret Act Violation) and Eleventh Cause of Action (Injunctive

**NOTICE OF ZILOG, INC.'S OBJECTION TO AMERICAN SEMICONDUCTOR, INC.'S [PROPOSED] ORDER GRANTING AMERICAN SEMICONDUCTOR, INC.'S MOTION FOR VOLUNTARY DISMISSAL OF ITS CLAIMS FOR MISAPPROPRIATION OF TRADE SECRETS, IMPROPER APPROPRIATION OF NAME, CONSUMER PROTECTION ACT, AND INJUNCTIVE RELIEF - 2**

Client:3538309.1

001005

Relief) against Zilog. However, ASI's Motion is deficient in several respects, including but not necessarily limited to the following:

- (a) More than one of the statements set forth in the recitals are untrue.
- (b) ASI seeks dismissal without prejudice.
- (c) ASI seeks dismissal without award of costs or attorney fees.
- (d) ASI did not seek dismissal of those portions of ASI's Eighth and Tenth

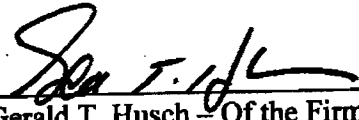
Causes of Action in which ASI seeks relief based upon the theory that Zilog misappropriated ASI's trade secrets. More specifically, ASI does not seek dismissal of that portion of ASI's Tenth Cause of Action (Declaratory Relief) in which ASI seeks to recover a "royalty" against Zilog "pursuant to the Idaho Trade Secrets Act" ("ITSA"). Second Amended Complaint and Demand for Jury Trial, p. 18, ¶ 126. Nor does ASI seek dismissal of that portion of ASI's Eighth Cause of Action (Unjust Enrichment) in which ASI apparently seeks damages for unjust enrichment under ITSA on the theory that "Zilog has received a benefit in the form of ASI's trade secrets and other protectable interest" "without American Semiconductor's consent." *Id.*, pp. 16-17, ¶¶ 110-111. See Idaho Code § 48-803(1) (allowing damages under ITSA for unjust enrichment caused by misappropriation under certain circumstances, or a royalty in lieu of damages measured by any other methods).

5. Zilog objects to dismissal of ASI's Sixth and Eleventh Causes of Action without prejudice, without award of costs or attorney fees, and without dismissal of those portions of ASI's Eighth and Tenth Causes of Action in which ASI seeks relief under ITSA or

based upon the theory that Zilog misappropriated ASI's trade secrets or other protectable interests.

DATED this 28th day of August, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch - Of the Firm  
Attorneys for Defendant Zilog, Inc.

**NOTICE OF ZILOG, INC.'S OBJECTION TO AMERICAN SEMICONDUCTOR, INC.'S [PROPOSED] ORDER GRANTING AMERICAN SEMICONDUCTOR, INC.'S MOTION FOR VOLUNTARY DISMISSAL OF ITS CLAIMS FOR MISAPPROPRIATION OF TRADE SECRETS, IMPROPER APPROPRIATION OF NAME, CONSUMER PROTECTION ACT, AND INJUNCTIVE RELIEF - 4** Client: 3538309.1

001007

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28th day of August, 2014, I caused a true and correct copy of the foregoing **NOTICE OF ZILOG, INC.'S OBJECTION TO AMERICAN SEMICONDUCTOR, INC.'S [PROPOSED] ORDER GRANTING AMERICAN SEMICONDUCTOR, INC.'S MOTION FOR VOLUNTARY DISMISSAL OF ITS CLAIMS FOR MISAPPROPRIATION OF TRADE SECRETS, IMPROPER APPROPRIATION OF NAME, CONSUMER PROTECTION ACT, AND INJUNCTIVE RELIEF** to be served by the method indicated below, and addressed to the following:

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COOPER & LARSEN, CHARTERED  
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Pocatello, ID 83205-4229  
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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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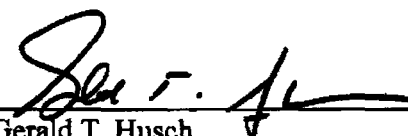
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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Gerald T. Husch

**NOTICE OF ZILOG, INC.'S OBJECTION TO AMERICAN SEMICONDUCTOR, INC.'S [PROPOSED] ORDER GRANTING AMERICAN SEMICONDUCTOR, INC.'S MOTION FOR VOLUNTARY DISMISSAL OF ITS CLAIMS FOR MISAPPROPRIATION OF TRADE SECRETS, IMPROPER APPROPRIATION OF NAME, CONSUMER PROTECTION ACT, AND INJUNCTIVE RELIEF - 5**

Client:3638309.1

001008

AUG 29 2014

CHRISTOPHER D. RICH, Clerk  
By KATRINA THIESSEN  
DEPUTY

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
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25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DEFENDANT ZILOG, INC.'S MOTION  
FOR SUMMARY JUDGMENT**



COMES NOW the defendant Zilog, Inc. ("Zilog"), by and through undersigned counsel, and pursuant to Rule 56 of the Idaho Rules of Civil Procedure, hereby moves this Court for an order granting summary judgment in its favor against plaintiff, American Semiconductor, Inc., on all of the causes of action asserted by Plaintiff, American Semiconductor, Inc. ("ASI") against Zilog in ASI's Second Amended Complaint and Demand for Jury Trial ("SAC"), which are ASI's:

- Fifth Cause of Action (Tortious Interference with Prospective Economic Advantage and Contract),
- Sixth Cause of Action (Idaho Trade Secret Act Violation),
- Eighth Cause of Action (Unjust Enrichment),
- Tenth Cause of Action (Declaratory Relief), and
- Eleventh Cause of Action (Injunctive Relief).<sup>1</sup>

Zilog moves for summary judgment on those causes of action on the following grounds and for the following reasons:

1. In its Sixth Cause of Action, which is entitled "Idaho Trade Secret Violation," ASI alleges that Zilog violated the Idaho Trade Secret Act ("ITSA"), on the theory that "Zilog obtained [ASI's] trade secrets and/or other protectable interests inherent in the design

---

<sup>1</sup> On August 19, ASI moved for voluntary dismissal of, *inter alia*, its Sixth Cause of Action (Idaho Trade Secret Act Violation) and Eleventh Cause of Action (Injunctive Relief) against Zilog. However, ASI seeks dismissal *without* prejudice and *without* award of costs or attorney fees, and ASI did not seek dismissal of those portions of ASI's Eighth and Tenth Causes of Action in which ASI seeks relief based upon the theory that Zilog misappropriated ASI's trade secrets. Zilog is not willing to accept a dismissal of ASI's Sixth and Eleventh Causes of Action without prejudice, without award of costs or attorney fees, or without dismissal of those portions of ASI's Eighth and Tenth Causes of Action in which ASI seeks relief based upon the theory that Zilog misappropriated ASI's trade secrets.

services rendered by the Individuals,” and seeks relief against Zilog in the form of monetary damages, disgorgement of any benefit received by Zilog, a royalty for the unauthorized use of ASI’s trade secrets and/or other protectable interests, and exemplary damages. SAC, p. 15, ¶¶ 97-99. Zilog is entitled to summary judgment on ASI’s Sixth Cause of Action because ASI has had an adequate time for discovery and cannot establish an essential element of its claim for relief, *i.e.*, that any of the ASI confidential information allegedly misappropriated by Zilog constituted a “trade secret.”

2. In its Fifth Cause of Action (Tortious Interference with Prospective Economic Advantage and Contract), ASI asserts common law claims against Zilog for (a) tortious interference with contract (the trade secret, confidential information, noncompetition and assignment of invention provisions of ASI’s Employee Confidentiality Agreements with the Individuals), and (b) tortious interference with prospective economic advantage (by “depriving American Semiconductor of the opportunities to earn income from the Individuals’ design services” provided to Zilog). SAC, pp. 14-15, ¶¶ 87-93.

A. Both of ASI’s tortious interference claims against Zilog are tort claims that are displaced (preempted) by ITSA because they are based upon the same factual allegations as ASI’s trade secret misappropriation claim.

B. Even if ASI’s claim against Zilog for tortious interference with contract were not displaced by ITSA, that claim must fail because ASI has not presented any evidence that Zilog had knowledge of ASI’s Employee Confidentiality Agreements with the Individuals.

C. Even if ASI’s claim against Zilog for tortious interference with prospective economic advantage were not displaced by ITSA, that claim must fail for two independent reasons: (i) just as a defendant cannot be liable for interference with its own contract

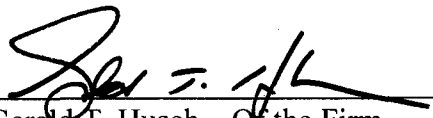
with a plaintiff, a defendant cannot be held liable for interference with its own prospective economic relationship with a plaintiff; and (ii) ASI never had any legitimate economic expectancy that Zilog would retain ASI to provide the services provided by Sage because ASI's hourly rate was too high to have been acceptable to Zilog.

3. In its Eighth Cause of Action (Unjust Enrichment), ASI alleges a claim of unjust enrichment based on its theory that "Zilog has received a benefit in the form of ASI's trade secrets and other protectable interest as a direct result of its solicitation and/or acceptance of services from the Individuals and Sage." SAC, p. 16, ¶ 110. In its Tenth Cause of Action (Declaratory Relief), ASI seeks declaratory relief in the form of an assignment of rights in all of ASI's alleged intellectual property purportedly incorporated into Zilog products and, pursuant to ITSA, a royalty for all of ASI's alleged intellectual property purportedly incorporated into Zilog products. See SAC, p. 18, ¶¶ 125-126. In its Eleventh Cause of Action (Injunctive Relief), ASI seeks injunctive relief preventing Zilog "from utilizing or disclosing American Semiconductor's 'Inventions' or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such 'Inventions' or trade secrets." SAC, p. 19, ¶ 131. Insofar as ASI is seeking relief *under ITSA* in its Eighth, Tenth and Eleventh Causes of Action, Zilog is entitled to summary judgment on those causes of action because ASI cannot establish that any of its allegedly misappropriated information meets ITSA's definition of a "trade secret." Insofar as ASI is seeking relief *under common law principles* in its Eighth, Tenth and Eleventh Causes of Action, Zilog is entitled to summary judgment on those causes of action because they seek to impose civil noncontract liability remedies for misappropriation of a trade secret and such remedies are displaced by ITSA.

This motion is based on the pleadings and other documents on file herein,  
together with the Memorandum in Support of Zilog's Motion for Summary Judgment and the  
Declaration of Gerald T. Husch in Support of Zilog's Motion for Summary Judgment, both of  
which are filed contemporaneously herewith.

DATED this 29th day of August, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August, 2014, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG, INC.'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

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LLC; David Roberts; Gyle Yearsley; and  
William Tiffany*

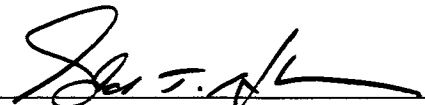
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and William Tiffany*

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American Semiconductor, Inc.*

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\_\_\_\_\_  
Gerald T. Husch

AUG 29 2014

CHRISTOPHER D. RICH, Clerk  
By KATRINA THIESSEN  
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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S MOTION FOR SUMMARY  
JUDGMENT RE: DEFENDANTS  
ROBERTS, YEARSLEY AND  
TIFFANY'S COUNTERCLAIMS**

**ORAL ARGUMENT REQUESTED**

ORIGINAL

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its counsel of record, the law firm of Parsons Behle & Latimer, hereby moves for summary judgment as to the counterclaims asserted by defendants and counterclaim-plaintiffs David Roberts, Gyle Yearsley and William Tiffany ("Counterclaimants"), and as set forth in Defendants' Verified Answer to Amended Complaint and Demand for Jury Trial, and Defendants' Affirmative Defenses and Counterclaims (filed, Jan. 13, 2012).


This motion is made pursuant to Rule 56 of the Idaho Rules of Civil Procedure. As set forth in the accompanying supporting papers, there is no genuine issue of material fact based on the pleadings, depositions and admissions on file that Counterclaimants cannot, as a matter of law, prevail on the claims against ASI for: (a) fraud/fraud in the inducement (count one); (b) tortious interference with contract (count two); (c) *quantum meruit* (count three); and (d) unjust enrichment (count four). Accordingly, ASI is entitled to judgment as a matter of law in its favor on these claims, in their entirety.

In support of the foregoing motion, ASI relies upon this this motion, the accompanying Memorandum, the accompanying Affidavit of Sarah H. Arnett and exhibits attached thereto, the pleadings and records on file in this matter, all matters which the Court may take judicial notice, such matters as may be presented by counsel at or prior to any hearing, and upon such other evidence or argument as may be considered by the Court prior to ruling on this motion.

Oral argument is requested.

DATED this 29<sup>th</sup> day of August, 2014.

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett


*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*



### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29<sup>th</sup> day of August, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: dbower@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com

  
Kennedy K. Luvai

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*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
Gyle Yearsley, William Tiffany and Evelyn Perryman*

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*Counsel for Counterclaimants*

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 314

AUG 29 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**MOTION FOR SUMMARY  
JUDGMENT BY SAGE SILICON  
SOLUTIONS, LLC, DAVID ROBERTS,  
GYLE YEARSLEY, AND WILLIAM  
TIFFANY**

RELATED COUNTER ACTIONS

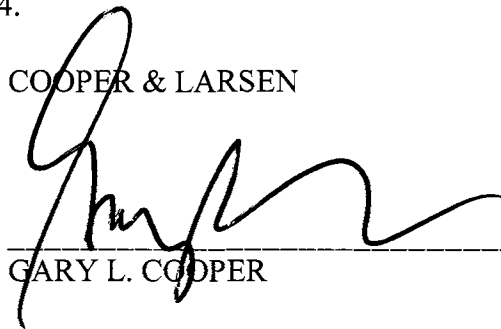
MOTION FOR SUMMARY JUDGMENT BY SAGE SILICON SOLUTIONS, LLC - PAGE 1

001019

COME NOW Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany, and pursuant to Rule 56 of the Idaho Rules of Civil Procedure moves for summary judgment on the grounds and for the reason that there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law. This motion is supported by the pleadings, Affidavits of Gary L. Cooper, David Roberts, Gyle Yearsley, William Tiffany and Dr. John Janzen and supporting memorandum filed herewith.

DATED this 28<sup>th</sup> day of August, 2014.

COOPER & LARSEN

A handwritten signature in black ink, appearing to read 'Gary L. Cooper', is written over a horizontal dashed line.

GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of August, 2014, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702

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☒ Express mail  
☐ Hand delivery  
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Gerald T. Husch  
Moffatt Thomas Barrett Rock & Fields  
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\_\_\_\_\_  
GARY L. COOPER

SEP 12 2014

CHRISTOPHER D. RICH, Clerk  
By KYLE MEREDITH  
DEPUTY

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
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25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S RENEWED MOTION  
FOR SANCTIONS PURSUANT TO  
I.R.C.P. 37 AND MOTION FOR  
SANCTIONS PURSUANT TO  
I.R.C.P. 11(a)(1)**

COMES NOW the above-named defendant, Zilog, Inc. ("Zilog"), by and through its undersigned attorneys of record, and pursuant to Rules 11(a)(1) and 37 of the Idaho Rules of Civil Procedure, respectfully moves the Court to enter an Order sanctioning plaintiff American Semiconductor, Inc. ("ASI" or "plaintiff"), as follows:

(a) Zilog seeks an Order of the Court dismissing the Sixth, Eighth, Tenth and Eleventh Causes of Action of ASI's Second Amended Complaint and Demand for Jury Trial ("Second Amended Complaint" or "SAC") with prejudice, insofar as those causes of action are based upon ASI's theory that Zilog misappropriated one or more of ASI's alleged trade secrets;<sup>1</sup>

(b) Zilog seeks an Order of the Court awarding against ASI Zilog's reasonable costs and attorney fees incurred in connection with its defense of ASI's claims for relief against Zilog for misappropriation of trade secrets and remedies under the Idaho Trade Secrets Act, or at least Zilog's reasonable costs and attorney fees incurred in connection with Zilog, Inc.'s Motion

---

<sup>1</sup> In the Sixth Cause of Action of ASI's Second Amended Complaint, ASI alleges a claim of "**violation of the Idaho Trade Secret[s] Act**" against Zilog and seeks monetary damages, disgorgement of any benefit received by Zilog and a royalty for the unauthorized use of ASI's trade secrets and/or other protectable interests. SAC, p. 15, ¶¶ 97-98 (emphasis added).

In its Eighth Cause of Action, ASI alleges a claim of unjust enrichment based on its theory that "Zilog has received a benefit in the form of **ASI's trade secrets** and other protectable interest as a direct result of its solicitation and/or acceptance of services from the Individuals and Sage." SAC, p. 16, ¶ 110 (emphasis added).

In its Tenth Cause of Action, ASI seeks declaratory relief in the form of an assignment of rights in all of ASI's alleged intellectual property purportedly incorporated into Zilog products and, "**pursuant to the Idaho Trade Secrets Act**," a royalty for all of ASI's alleged intellectual property purportedly incorporated into Zilog products. SAC, p. 18, ¶¶ 125-126 (emphasis added).

In its Eleventh Cause of Action, ASI seeks injunctive relief preventing Zilog "from utilizing or disclosing American Semiconductor's 'Inventions' or **trade secrets**, including prohibiting the sale of any product which incorporates or was created improperly utilizing such 'Inventions' or **trade secrets**." SAC, p. 19, ¶ 131 (emphasis added).

to Compel, Zilog, Inc.'s Motion for Sanctions, and Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1); and

(c) In the event the Court grants relief to Zilog under paragraph (b) above, Zilog seeks a period of fourteen (14) days in which to submit an affidavit and memorandum of costs and attorney fees for the Court's consideration at a subsequent hearing.

This motion is made on the following grounds:

(a) As the Court has already ruled, ASI failed or refused to comply with the Court's oral ruling from the Bench at the hearing on Zilog, Inc.'s Motion to Compel on May 2, 2014 (as well as the Court's subsequent written Order Regarding Zilog, Inc.'s Motion to Compel) because ASI intentionally failed or refused, by May 23, 2014, to describe with reasonable specificity, each and every trade secret or trade secrets owned by ASI that are the subject matter of this action, and thereby caused prejudice to Zilog;

(b) Thereafter, ASI failed or refused to comply with the Court's oral ruling from the Bench at the hearing on Zilog, Inc.'s Motion for Sanctions on July 18, 2014 (as well as the Court's subsequent written Order on Zilog, Inc.'s Motion for Sanctions) because ASI intentionally failed or refused, by August 4, 2014, to supplement ASI's response to Zilog's Interrogatory No. 3 to describe with reasonable specificity each and every trade secret or trade secrets owned by ASI which are the subject matter of this action, and thereby caused further prejudice to Zilog; and

(c) ASI filed ASI's Second Amended Complaint, thereby certifying pursuant to Rule 11(a)(1), that to the best of the its "knowledge, information, and belief after reasonable inquiry [the SAC] is well grounded in fact." However, a reasonable inquiry should and would

have disclosed to ASI that ASI's allegation—that Zilog obtained ASI's trade secrets in violation of the Idaho Trade Secrets Act—was not well grounded in fact.

This motion is based upon the record herein, including but not limited to:

(a) Zilog, Inc.'s Motion to Compel, the Memorandum in Support of Zilog, Inc.'s Motion to Compel, and the Declaration of Stephen R. Thomas in Support of Zilog, Inc.'s Motion to Compel, all of which were filed herein on or about April 18, 2014;

(b) the Court's oral rulings from the Bench on May 2, 2014, and the Court's subsequent written Order Regarding Zilog, Inc.'s Motion to Compel, which Order was filed herein on or about June 18, 2014;

(c) Zilog, Inc.'s Motion for Sanctions, the Memorandum in Support of Zilog, Inc.'s Motion for Sanctions and the Declaration of Gerald T. Husch in Support of Zilog, Inc.'s Motion for Sanctions, all of which were filed on or about July 3, 2014;

(c) Defendant Zilog, Inc.'s Notice of Errata Regarding the Memorandum in Support of Zilog, Inc.'s Motion for Sanctions, filed July 9, 2014;

(d) the Reply in Support of Zilog, Inc.'s Motion for Sanctions, filed on or about July 16, 2014;

(e) the Court's oral rulings from the Bench on July 18, 2014, and the Court's subsequent written Order on Zilog, Inc.'s Motion for Sanctions, which Order was filed herein on or about August 27, 2014; and

(f) the Memorandum in Support of Zilog's Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1), and the Declarations of Gerald T. Husch, Dan Eaton, David Staab, and Monte Dalrymple in Support of

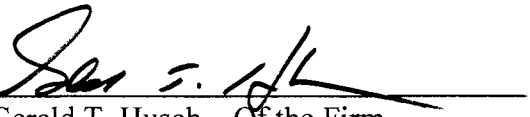


Zilog's Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions  
Pursuant to I.R.C.P. 11(a)(1), all of which are filed herewith.

WHEREFORE, Zilog respectfully requests the Court to enter its Order granting  
Zilog's Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions  
Pursuant to I.R.C.P. 11(a)(1).

DATED this 12th day of September, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September, 2014, I caused a true and correct copy of the foregoing **ZILOG, INC.'S RENEWED MOTION FOR SANCTIONS PURSUANT TO I.R.C.P. 37 AND MOTION FOR SANCTIONS PURSUANT TO I.R.C.P. 11(a)(1)** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182

*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☒ (x) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
12550 W. Explorer Dr., Suite 100  
Boise, ID 83713  
Facsimile (208) 345-4461

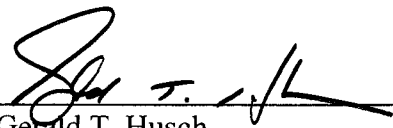
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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☐ ( ) Overnight Mail  
☐ ( ) Facsimile

  
\_\_\_\_\_  
Gerald T. Husch

Stephen R. Thomas, ISB No. 2326  
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gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. **5:00**

**SEP 12 2014**

**CHRISTOPHER D. RICH, Clerk**  
By **KYLE MEREDITH**  
DEPUTY

Case No. CV OC 1123344

**DECLARATION OF DAN EATON IN  
SUPPORT OF ZILOG, INC.'S  
RENEWED MOTION FOR  
SANCTIONS PURSUANT TO  
I.R.C.P. 37 AND MOTION FOR  
SANCTIONS PURSUANT TO  
I.R.C.P. 11(a)(1)**

**DECLARATION OF DAN EATON IN SUPPORT OF ZILOG, INC.'S RENEWED  
MOTION FOR SANCTIONS PURSUANT TO I.R.C.P. 37 AND MOTION FOR  
SANCTIONS PURSUANT TO I.R.C.P. 11(a)(1) - 1**

Client: 3551397.1

001028

**ORIGINAL**

DAN EATON declares and states as follows:

1. I am making this declaration on the basis of my personal knowledge in support of Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1).
2. Between 2009 and August 8, 2014, I was employed by Zilog, Inc. ("Zilog") as Vice President and General Counsel. Prior to that time, I was employed by Zilog as its Director of Intellectual Property. I voluntarily left my employment with Zilog on or about August 8, 2014, to take a position as general counsel of another company.
3. I hold a juris doctorate from Santa Clara University School of Law. I also hold a Bachelor of Science in Electrical Engineering from New Mexico State University. I am an active member in good standing of the California State Bar.
4. I had primary responsibility for managing the defense of Zilog, Inc., in connection with the claims of American Semiconductor, Inc. ("ASI"), between September 2011, when Zilog received a demand letter, a reasonable facsimile of which is attached hereto as Exhibit A, from ASI, and August 8, 2014, when I left my employment with Zilog. After Zilog retained the Moffatt Thomas law firm, I actively remained closely involved in all aspects of the defense of the case, including but not limited to developing strategy for the defense of the case, collecting documents for production to ASI or supervising their collection, reviewing pleadings filed or to be filed in the case, preparing witnesses for depositions, attending depositions of witnesses in the case in person, attending hearings before this Court by telephone and reviewing the billing statements that Moffatt Thomas submitted to me on or before July 15, 2014, for costs and attorney fees incurred in the defense of the case through June 30, 2014.

5. Based upon the foregoing, in my opinion well over 50% of the costs and attorney fees incurred by Zilog prior to June 30, 2014, were incurred in defense of ASI's claim that Zilog misappropriated ASI's trade secrets.

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 12 day of September, 2014.



Dan Eaton

**DECLARATION OF DAN EATON IN SUPPORT OF ZILOG, INC.'S RENEWED  
MOTION FOR SANCTIONS PURSUANT TO I.R.C.P. 37 AND MOTION FOR  
SANCTIONS PURSUANT TO I.R.C.P. 11(a)(1) - 3**

Client:3551397.1

001030

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September, 2014, I caused a true and correct copy of the foregoing **DECLARATION OF DAN EATON IN SUPPORT OF ZILOG, INC.'S RENEWED MOTION FOR SANCTIONS PURSUANT TO I.R.C.P. 37 AND MOTION FOR SANCTIONS PURSUANT TO I.R.C.P. 11(a)(1)** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
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Pocatello, ID 83205-4229  
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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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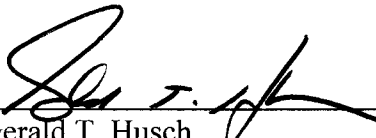
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
Gerald T. Husch

# **EXHIBIT A**



# ANDERSON, JULIAN & HULL LLP

Attorneys and Counselors at Law

Robert A. Anderson  
Brian K. Julian  
Alan K. Hull  
Chris H. Hansen  
Phillip J. Collaer  
Michael P. Stefanic  
Amy G. White

Mark D. Sebastian  
Matthew O. Pappas  
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Web Site: [www.ajhlaw.com](http://www.ajhlaw.com)  
With Attorneys Licensed to Practice in  
Idaho, CO, OR, PA, UT and WA

September 27, 2011

David Staab, Director  
Zilog Worldwide U.S. Headquarters  
1590 Buckeye Drive  
Milpitas, CA 95035-7418

Re: American Semiconductor v. Sage Silicon Solutions, et.al

Dear Mr. Staab;

This firm has been retained to represent American Semiconductor in connection with enforcement of its intellectual property rights and trade secrets, as well as an Employee Confidentiality Agreement entered into between American Semiconductor and its employees. A copy of an example of this contract is enclosed for your review. It is our understanding that Zilog has engaged the following employees of American Semiconductor to perform certain design work for Zilog: David Roberts, William Tiffany, Gyle Yearsley, Russell Lloyd and Perryman. These employees are subject to the Employee Confidentiality Agreement, as well as the American Semiconductor Employee Confidentiality

I write this letter from the employees' employees' correspondence. American Semiconductor. Further fiduciary duty. Cons performed by these electronic form, be

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David Staab  
Zilog Worldwide U.S.  
Headquarters  
1590 Buckeye Dr.  
Milpitas, CA 95035

## COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) ☒ Date of Delivery
- D. Is delivery address different from item 1? ☒ Yes ☐ No  
If YES, enter delivery address below: 10/3/11
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

7009 2820 0002 8372 3573

102595-02-M-1540

ASI002610



## Attorneys and Counselors at Law

communications related to work  
Solutions, written or in an  
ncy of the potential litigation

**ASI002611**  
091034

September 27, 2011  
Page 2

Failure to preserve these documents and/or electronically stored information may result in a claim for spoliation of evidence against Zilog.

Secondly, we demand that you cease and desist any business dealings with these individuals and/or Sage Silicon Solutions. Their employment contracts strictly prohibit "moonlighting" and, as stated above, all work performed by these persons while employed by American Semiconductor has been assigned to American Semiconductor by way of the employment contract.

Additionally, I am concerned that the Idaho Trade Secrets Act has been violated by Zilog by engaging these individuals at a lower than normal design rate to participate in this assignment. Idaho Code § 48-801, *et seq.* has a very broad definition of trade secret which includes any information including a formula, pattern, compilation program, computer program, devise method, technique or process that has separate economic value. Misappropriation includes the acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means. Idaho law allows for injunctive relief as well as damages including punitive of two times the actual damages. It is my understanding that Zilog paid these individuals, or Sage Silicon Solutions, at a rate that was significantly below the standard market rates for the type of design work performed. This would put Zilog on notice that these individuals were improperly or illegally performing design work.

At any rate, now that Zilog is on actual notice that these individuals are subject to the Employee Confidentiality Agreement, any future relationship between Zilog and these persons, outside the ambit of their employment with American Semiconductor, could result in a claim for tortious interference with contract and tortious interference with prospective economic advantage.

Our review of this incident at this time leads us to the conclusion that American Semiconductor employees have contributed substantially to the design of a product for commercial use at Zilog. Contractually, there is a license or royalty owed back to American Semiconductor for this work. At a minimum, American Semiconductor is certainly entitled to all records including what design work was performed, payment records and other communications between these employees and your company. By receipt of this letter we are requesting your cooperation in forwarding all such information to me for review within seven days of the date of this letter. If a sufficient response is not received within seven days of the date of this letter, American Semiconductor may choose to seek injunctive and declaratory relief, including potentially damages, against the parties involved.

September 27, 2011  
Page 3

It is early in this investigation and I am unable to predict with reasonable accuracy whether litigation will be filed and whether Zilog will be named a party. I would point out that my client might consider continuing design work for Zilog under this project at market rates, and may be willing to discuss completion of this assignment with your company.

It is difficult to accept that Zilog had no knowledge these employees were acting outside their employment with American Semiconductor. I base this on a number of factors. First of all, as discussed above, Zilog was paying far less than market rates for the services of this design team. Second, the principal of American Semiconductor, Doug Hackler, had multiple conversations with Rick White, who we believe was the General Manager for Operations at Zilog's Idaho offices, concerning the desire of American Semiconductor to perform similar design services for Zilog. Additionally, it is improbable these employees could have performed design services outside the employment of American Semiconductor without significant technological aid regarding computer software and design assistance.

In light of these factors, we conclude that there was reason to know by Zilog of these employees improper and illegal activities. I trust that this letter will likely be forwarded to your general counsel and I look forward to speaking with him further regarding these issues.

Very truly yours,

Brian K. Julian

BKJ/pk  
Enclosure  
Cc: American Semiconductor

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**SEP 12 2014**

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DEPUTY

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**MEMORANDUM IN SUPPORT OF  
ZILOG, INC.'S RENEWED MOTION  
FOR SANCTIONS PURSUANT TO  
I.R.C.P. 37 AND MOTION FOR  
SANCTIONS PURSUANT TO  
I.R.C.P. 11(a)(1)**

**MEMORANDUM IN SUPPORT OF ZILOG, INC.'S RENEWED  
MOTION FOR SANCTIONS PURSUANT TO I.R.C.P. 37 AND  
MOTION FOR SANCTIONS PURSUANT TO I.R.C.P. 11(a)(1)**

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## I. INTRODUCTION

“In order to prevail in a misappropriation action under the ITSA, the plaintiff must show that a trade secret actually existed.” *Basic Am., Inc. v. Shatila*, 133 Idaho 726, 734, 992 P.2d 175, 183 (1999) (citations omitted). To date, the Court has entered two separate rulings ordering plaintiff American Semiconductor, Inc. (“ASI” or “plaintiff”) to describe with reasonable specificity each and every trade secret owned by ASI that is the subject of this action.

First, the Court ruled from the Bench at the hearing on Zilog, Inc.’s Motion to Compel on May 2, 2014 (as well as in the Court’s subsequent written Order Regarding Zilog, Inc.’s Motion to Compel) that ASI was required, by May 23, 2014, to describe with reasonable specificity each and every trade secret or trade secrets owned by ASI that are the subject matter of this action.

ASI did not do so, prompting Zilog, Inc. (“Zilog”) to file a motion for sanctions. The Court ruled from the Bench at the hearing on Zilog, Inc.’s Motion for Sanctions on July 18, 2014 (as well as in the Court’s subsequent written Order on Zilog, Inc.’s Motion for Sanctions) that ASI was in violation of its previous Order, warranting sanctions:

However, I do not believe that this Court is willing, nor should it be willing until the deadline for dispositive motions for Zilog, for example, to file a motion for summary judgment, for ASI to finally disclose the trade secrets with specificity in opposition to the motion. *ASI is in violation of this Court’s discovery order now.*

July 18, 2014 Reporter’s Transcript of Proceedings (“July 18 Tr.”), 48:14-21(emphasis added).

Despite holding that ASI was then in violation of its previous Order, the Court gave ASI until August 4, 2014, to supplement ASI’s response to Zilog’s Interrogatory No. 3 to describe with reasonable specificity each and every trade secret or trade secrets owned by ASI



that are the subject matter of this action and thereby caused prejudice to Zilog. At oral argument regarding Zilog's motion for sanctions, the Court warned ASI:

If ASI fails to provide such disclosure by August the 4th, 2014, or if such disclosure is not reasonably specific, Zilog may renew its motion for sanctions, and the Court will consider other remedies, up to and including dismissal of certain of ASI's claims.

*Id.* 50:9-14.

Despite the Court's admonition, ASI did not supplement its response to Zilog's Interrogatory No. 3, did not describe any alleged trade secret with reasonable specificity, and did not comply with the Court's Order. Instead, *after* the Court-ordered deadline, ASI moved the Court for voluntary dismissal of its trade secret claim, without prejudice, and without awarding costs or fees to Zilog.

ASI's violation of not one, but two, of the Court's discovery Orders warrants the sanction of dismissal and an award of costs and attorney fees under Idaho Rule of Civil Procedure ("I.R.C.P.") 37(b). Moreover, ASI's continued failure—at this stage in the litigation (less than three months before trial is to commence)—to support its factual allegations by identifying, with reasonable specificity: (1) what it is in the ASI PS10\_ASIC that is a trade secret; and (2) what it is that Sage allegedly transferred to Zilog, calls into doubt the veracity of ASI's trade secret claim in the first instance, requiring the imposition of sanctions against ASI under I.R.C.P. 11.

It should have been apparent to ASI, before ASI served Zilog in this action, that ASI's claim for misappropriation of trade secrets would not have been well grounded in fact. Since inception, the factual underpinnings for ASI's trade secret claim have rested solely on ASI's erroneous assumption that because the same engineers worked on both ASI's PS10\_ASIC

(an Application Specific Integrated Circuit) and Zilog's Z8F6480/Z8F6482 Microcontroller, those engineers must have used ASI trade secrets in providing design services for Zilog. This assumption, without more, is legally insufficient. The law in Idaho makes clear that "the legislature also did not intend that merely hiring a competitor's employee constitutes acquiring a trade secret." *Nw. Bec-Corp v. Home Living Serv., Inc.*, 136 Idaho 835, 840, 41 P.3d 263, 268 (2002).

Yet, for the next two and a half years, ASI apparently took no affirmative steps to test the veracity of its trade secret allegation. According to ASI, it did not even hire an expert to figure out what, if anything at all, it was about the ASI PS10\_ASIC that constitutes a trade secret—until approximately two months ago. *See* July 18 Tr. 28:22 – 29:1 ("THE COURT: When was the expert hired and retained? MR. ZARIAN: It's been months -- weeks, if not months, in this case. We have not had a retained expert all along; that is not the case.").

For the reasons set forth herein, as in the prior briefing before the Court, Zilog respectfully moves the Court to enter an order, pursuant to Rules 11(a)(1) and 37 of the Idaho Rules of Civil Procedure, dismissing ASI's trade secret claim and related requests for relief with prejudice and awarding Zilog its reasonable costs and attorney fees.

## **II. BACKGROUND**

In bringing this renewed motion for sanctions, Zilog incorporates by reference the following, all a part of the record before the Court:

1. Zilog, Inc.'s Motion to Compel, filed April 18, 2014;
2. Memorandum in Support of Zilog, Inc.'s Motion to Compel, filed April 18, 2014;

3. Declaration of Stephen R. Thomas in Support of Zilog, Inc.'s Motion to Compel, filed April 18, 2014;
4. Reporter's Transcript of Proceedings for the motion hearing held May 2, 2014;
5. Order Regarding Zilog, Inc.'s Motion to Compel, filed June 18, 2014;
6. Zilog, Inc.'s Motion for Sanctions, filed July 3, 2014;
7. Declaration of Gerald T. Husch in Support of Zilog, Inc.'s Motion for Sanctions, filed July 3, 2014;
8. Memorandum in Support of Zilog, Inc.'s Motion for Sanctions, filed July 3, 2014;
9. Defendant Zilog, Inc.'s Notice of Errata Regarding Its Memorandum in Support of Zilog, Inc.'s Motion for Sanctions, filed July 9, 2014;
10. Reply in Support of Zilog, Inc.'s Motion for Sanctions, filed July 16, 2014;
11. Reporter's Transcript of Proceedings for the motion hearing held July 18, 2014; and
12. Order on Zilog's Motion for Sanctions, filed August 27, 2014.

In addition to the foregoing of record, Zilog's renewed motion for sanctions is supported by the Declaration of Gerald T. Husch in Support of Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1) ("Husch Dec."); the Declaration of Monte Dalrymple in Support of Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to

I.R.C.P. 11(a)(1) ("Dalrymple Dec."); the Declaration of David Staab in Support of Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1) ("Staab Dec."); and the Declaration of Dan Eaton in Support of Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1) ("Eaton Dec.").

### III. ARGUMENT

**A. Zilog Is Entitled to an Award of Sanctions, Including an Order Dismissing ASI's Trade Secret Claim with Prejudice and an Order Awarding Zilog Its Reasonable Expenses and Attorney Fees Pursuant to I.R.C.P. 37(b).**

As the Court is aware, "[a] court has authority under I.R.C.P. 37(b), 37(d) and 37(e) to impose sanctions if a party fails to comply with a discovery order." *Kugler v. Drown*, 119 Idaho 687, 690, 809 P.2d 1166, 1169 (Ct. App. 1991). "The authority is discretionary and sanctions may include barring evidence from being introduced, dismissing an action, and assessing reasonable expenses, including attorney fees. I.R.C.P. 37(b)(2), (b)(2)(B),(C); 37(d); 37(e)." *Id.*

During the hearing on Zilog Inc.'s Motion for Sanctions on July 18, 2014, the Court found that ASI was then in violation of the Court's discovery Order and that such violation would have justified the dismissal of certain claims that ASI has asserted against Zilog. Order, p. 9 (July 18 Tr., 43:14 – 48:21). Although the Court was unwilling at that time to dismiss ASI's claim for misappropriation of trade secrets, this sanction is now appropriate in light of ASI's continued failure to describe its trade secrets with reasonable specificity. Zilog therefore requests that the Court enter an order dismissing ASI's trade secret claim and awarding Zilog the

reasonable expenses and attorney fees it has incurred in having to bring not one but three separate motions.

ASI's claim for violation of the Idaho Trade Secrets Act ("ITSA") is based on its allegation that ASI's "trade secrets and/or other protectable interests were utilized [by the Individual Defendants] in providing services to Zilog, in violation of the Idaho Trade Secret Act." Second Amended Complaint and Demand for Jury Trial ("Second Amended Complaint" or "SAC") at 14, ¶ 96; *see also id.* at 14, ¶ 95. In ruling on Zilog's Motion for Sanctions, the Court recognized that "the heart of this case" really boils down to two distinct questions: "What is it [in the ASI PS10\_ASIC] that is a trade secret?" and "What is it that the Sage defendants allegedly transferred to Zilog?" Husch Dec. Ex. A (July 18 Tr.) 47:25 – 48:3.<sup>1</sup> The Court then ordered ASI to answer those two questions. In this regard, the Court ordered that:

[A]s a sanction for its failure to comply with this Court's order of June 18, 2014, that Plaintiff, ASI must supplement its response to interrogatory No. 3 of Zilog's first set of discovery requests to plaintiff. ASI shall describe with reasonable specificity each and every trade secret or trade secrets owned by ASI which are the subject of this action. Such supplementation shall occur by Monday, August 4th, 2014, whether or not ASI has engaged or will engage an expert on the issue.

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<sup>1</sup> *See also Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210, 221 (6th Dist. 2010) (the plaintiff is burdened to make two showings: first, the plaintiff must clearly identify what the "thing" is that is alleged to be a trade secret; and, second, the plaintiff must be able to clearly articulate why that "thing" belongs in the legal category of a trade secret); *Basic Am., Inc. v. Shatila*, 133 Idaho 726, 734, 992 P.2d 175, 183 (1999), citing *Electro-Craft Corp. v. Controlled Motion, Inc.*, 332 N.W.2d 890, 897 (Minn. 1983) ("Without a proven trade secret there can be no misappropriation, even if the defendants' action was wrongful.").

*Id.*, 49:22 – 50-8. Despite first alleging misappropriation of ASI trade secrets nearly three years ago, ASI has failed or refused to answer the first of the Court’s two *prima facie* questions:

“What is it [in the ASI PS10\_ASIC] that is a trade secret?”

The Court’s Order was unmistakable and did not leave ASI with any option other than to describe its trade secrets with reasonable specificity. Having failed to do so, ASI is now in violation of not one—but two—of the Court’s discovery Orders. In light of ASI’s strident refusal to comply with these Orders, Zilog respectfully requests the Court to sanction ASI by dismissing its trade secret claim, dismissing its other requests for relief under ITSA, and imposing costs and attorney fees against it pursuant to Rule 37.

**B. Zilog Is Entitled to an Award of Sanctions, Including Dismissal of ASI’s Trade Secret Claim and Assessment of Reasonable Expenses and Attorney Fees Pursuant to I.R.C.P. 11.**

The manner in which ASI has prosecuted its claim for misappropriation of trade secrets also justifies the imposition of sanctions under Idaho Rule of Civil Procedure 11. Under I.R.C.P. 11(a)(1), when a party signs a pleading, motion or other paper, the party thereby “certifies” that it believes “after reasonable inquiry” that the document is “well grounded in fact” and “not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” *Id.* If a document is signed in violation of this rule, the rule directs the imposition of an appropriate sanction:

If a pleading, motion or other paper is signed in violation of this rule, *the court*, upon motion or upon its own initiative, *shall impose upon* the person who signed it, *a represented party*, or both, *an appropriate sanction, which may include* an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including *a reasonable attorney’s fee*.

*Id.* (emphasis added).

Furthermore, the obligation to conduct a reasonable inquiry continues through further investigation and discovery. *Landvik v. Herbert*, 130 Idaho 54, 62, 936 P.2d 697, 705 (Ct. App. 1997). Thus, sanctions may be awarded against an attorney or party who maintains a claim after obtaining information in discovery showing that the claim is meritless. *Id.* See also Advisory Notes to 1993 Amendments to Federal Rules of Civil Procedure, Rule 11 (“Moreover, if evidentiary support is not obtained after a reasonable opportunity for further investigation or discovery, the party has a duty under the rule not to persist with that contention.”).

**1. ASI did not have a reasonable belief that Zilog misappropriated a trade secret when it filed the operative complaint in this matter.**

In addition to violating not one, but two, of the Court’s discovery Orders, ASI has prosecuted its misappropriation of trade secrets claim in a manner that is sanctionable under Rule 11. Since a party maintaining a misappropriation of trade secrets claim bears the burden of proving the existence of a trade secret, Rule 11 required ASI to conduct a reasonable inquiry into this element of the claim before filing its complaint, and not to assert the claim if it was not well grounded in fact. See *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 898, 243 F.3d 1069, 1086 (2010); see also *Homecare CRM, LLC v. The Adam Group*, 952 F. Supp. 2d 1373, 1381 (N.D. Ga. 2013).

In *Homecare CRM, LLC v. The Adam Group*, the United States District Court for the Northern District of Georgia awarded Rule 11 sanctions against a plaintiff for bringing a misappropriation of trade secrets claim without a reasonable basis for alleging that the defendant had misappropriated its trade secrets. 952 F. Supp. 2d at 1381. In support of its Rule 11 motion, the defendant pointed to a comparison matrix of the parties’ competing devices that the plaintiff

had prepared several months prior to filing suit that concluded the two products had different capabilities and the defendant had not surreptitiously gained access to the plaintiff's product. *Id.* at 1382-83.

The plaintiff filed suit in spite of its own report, and the defendant moved for sanctions under Rule 11. The court granted the motion, finding that the plaintiff's own matrix prevented it from demonstrating a reasonable belief in its trade secrets claim. *Id.* at 1384. In determining that dismissal of the trade secrets claim and an award of fees and costs incurred in defending the trade secrets claim were appropriate sanctions, the court determined that the plaintiff "ignored evidence in its possession that directly contradict[ed] the factual allegations made in support of its trade secrets claim." *Id.* at 1385. The court further observed that while current counsel had only recently appeared in the case, they had had several weeks to assess their client's trade secrets claim before the defendant filed its Rule 11 motion. *Id.* ***"Their review of the evidence should have shown them that Homecare's own documents rendered its trade-secrets claim objectively frivolous, and that prior counsel and Homecare should have known this when the action was filed."*** *Id.* (emphasis added).

If a court can impose Rule 11 sanctions when a plaintiff lacks a reasonable belief that a trade secret was misappropriated, as the *Homecare* court did, it stands to reason that a court may impose Rule 11 sanctions when a party lacks a reasonable belief that it possessed a trade secret in the first place. In this case, there are at least three reasons to believe that ASI lacked a reasonable belief as to this threshold issue: first, ASI's inability to identify any aspect of the ASI PS10\_ASIC that is not generally known in the industry; second, ASI has continued to insist, in spite of clear legal authority to the contrary, that the mere fact that the Individual



Defendants' worked for both ASI and Zilog at the same time, is evidence that Zilog misappropriated ASI's trade secrets; and third, ASI's continued failure to comply with the Court's discovery Orders.

- a. **There is nothing in the ASI portions of the digital design of the ASI PS\_10 ASIC that was not generally known in the industry at all relevant times.**

While ASI contends that its trade secrets are bound up in the ASI PS\_10 ASIC Husch Dec. Ex. D (Hackler Depo.) 99:13 – 100:6; 119:1-7, this contention does not withstand close scrutiny. Upon examination of the ASI PS\_10 ASIC design files, Zilog's forensic consultant, Monte Dalrymple, determined that there was "nothing in the ASI portions of the digital design of the ASI PS10\_ASIC [that] would qualify as a trade secret because nothing in the ASI portions of the digital design of the ASI PS10\_ASIC was novel or not generally known among microcontroller design engineers in 2010 or 2011." Dalrymple Dec. 4. Further, "[t]hat fact should have been obvious to ASI upon an examination of the design files for the ASI PS10\_ASIC." *Id.*

Mr. Dalrymple's opinion, that ASI could have independently assessed whether trade secrets existed, is credible in light of ASI's institutional expertise. Dale Wilson, for example, has worked for ASI for the past nine years and has been ASI's director of design and test for approximately five years. Husch Dec. Ex. B (Dale Wilson Depo.) 11:1-13. As he testified during his deposition, he has both an undergraduate degree and a master's degree in electrical engineering. *Id.* at 15:16 – 16:2. His job responsibilities include managing a design team as well as test engineers. *Id.* at 11:17- 24; *see also* Husch Dec. Ex. C (ASI 130).

ASI has also benefited from representation by counsel that holds himself out as having expertise in this area of law. *See* July 18 Tr. at 52:15 – 52:23 (“THE COURT: -- to dump 73,000 files on somebody and say that’s it. That is not reasonably specific. That is not reasonable specificity. To me, that is obvious; it is common sense. MR. ZARIAN: Okay. THE COURT: *So I should haven’t had to tell you, a specialist in the area, that this is true.* It should have been obvious.”) (emphasis added). Given the combined expertise of ASI and counsel, ASI’s failure to conduct a reasonable inquiry as to the existence of a trade secret is particularly egregious.

Even if ASI needed additional information from Zilog in discovery to determine that it did not have a trade secret at issue in this case, ASI received it nearly a year ago. *See* Declaration of Ramon Lopez in Opposition to American Semiconductor, Inc.’s Renewed Motion to Compel Against Defendant Zilog, Inc. ¶ 6, pp. 4-5. However, instead of retaining an expert immediately to review the files that Zilog produced, it appears that ASI retained an expert only recently. *See* Husch Dec. Ex. A (July 18 Tr.) 28:3 – 29:5, *supra*.

In *Compuware Corp. v. Health Care Service Corp.*, 2002 WL 485710 (N.D. Ill. Apr. 1, 2002), the Court imposed sanctions against the plaintiff under both Rule 37 and Rule 11 as a result of Plaintiff’s continued failure to identify its trade secrets with specificity. There, as here, the plaintiff, during the pendency of the litigation, asserted that “each of its software programs, in and of themselves, were trade secrets.” *Id.*, 2002 WL 485710, at \*7. “The gist of Compuware’s position was that, since its software products were the subject of a confidentiality provision in its licensing agreement with Blue Cross, the Court should simply accept Compuware’s allegation that [Defendants] must have appropriated trade secrets when Blue Cross

allegedly violated the confidentiality provision of the licensing agreements.” *Id.* The Court disagreed and entered an order compelling plaintiff to supplement its discovery to specifically identify its trade secrets. *Id.* The court warned Compuware:

“to the extent that your client is aware as to specific trade secrets that were misappropriated . . . you have to identify it” and that ***“under Rule 11 . . . you can’t just come out and say that . . . since our theory is that the other side didn’t have the right to access our programs, our programs themselves are trade secret. You have got to be more specific than that”***

*Id.* (internal citations omitted) (emphasis added).

In response plaintiff Compuware merely listed the various functions of its software products, imposing the burden on defendants to hire an expert to decipher its submissions. *Id.* As here, Defendants moved for sanctions. The court awarded defendant sanctions, concluding:

Clearly, this submission did not satisfy the Court’s October 26th Order, requiring Compuware to specifically identify the trade secrets that Blue Cross and Unitech had allegedly misappropriated. Given the state of the law, the Court’s warning during the October 26th hearing, and Compuware’s Supplemental Response, ***the Court can only conclude that either: 1) Compuware was merely attempting to at least superficially comply with this Court’s Order, while continuing to frustrate Blue Cross’ ability to defend itself in this lawsuit; or 2) Compuware was not aware of what its trade secrets were. Neither reason justifies Compuware’s failure to comply with this Court’s discovery order.***

*Id.*, 2002 WL 485710, at \*8 (emphasis added). Finding that plaintiff had violated the court’s orders, the court in Compuware sanctioned plaintiff by dismissing with prejudice plaintiff’s trade secret claims that did not comply with the court’s prior order, awarding defendants their costs and fees, and sanctioning plaintiff ten thousand dollars. *Id.*

The exact same analysis applies here. The fact that neither ASI nor its expert can articulate ASI's trade secrets demonstrates that ASI still does not know what its trade secrets are. Given that identification of a trade secret is a *prima facie* requirement to bring a claim for misappropriation, ASI never had a reasonable basis to assert a misappropriation claim against Zilog in the first place. As this Court has already held, the failure of ASI to define its trade secrets with reasonable specificity has prejudiced Zilog and continues to prejudice Zilog. *See* July 18 Tr. 46:22 – 47:3 (“Further, the Court finds that with trial scheduled to begin on December 2nd, 2014, ASI's failure to describe its trade secrets, which are the subject of several of its claims, with reasonable specificity has caused and will continue to cause prejudice to the defendant so long as such failure continues.”).

**b. General industry knowledge is not a trade secret.**

Contrary to ASI's position, it is well accepted that the general knowledge and skill of an employee are not protectable as a trade secret. *See, e.g., Flsmidth Spokane, Inc. v. Emerson*, 2014 WL 2711790, at \*8 (D. Idaho June 16, 2014), citing *Nw. Bec-Corp. v. Home Living Serv.*, 136 Idaho 835, 840, 41 P.3d 263, 268 (Idaho 2002) (“[T]he legislature also did not intend that merely hiring a competitor's employee constitutes acquiring a trade secret.”). Rather, “[w]hen making a claim for the wrongful use of trade secrets, ***‘the complainant should describe the subject matter of the trade secret with sufficient particularity to separate it from matters of general knowledge in the trade or of special knowledge of those persons skilled in the trade.’***” *Basic Am.*, 133 Idaho at 739, 992 P.2d at 188, citing *Universal Analytic, Inc. v. MacNeal-Schwendler Corp.*, 707 F. Supp. 1170, 1177 (C.D. Cal. 1989) (quoting *Diodes, Inc. v. Franzen*, 260 Cal. App. 2d 244, 67 Cal. Rptr. 19 (1968)).

Since the filing of ASI's Complaint, Zilog has attempted to flesh out the vague descriptions of ASI's trade secrets by serving interrogatories and filing motions before the Court. The Court has issued two orders directing ASI to describe its trade secrets with reasonable specificity, and ASI has not complied with either.

Rather than comply with the Court's recent Order directing it to respond to Zilog's Interrogatory No. 3 by August 3, 2014, ASI filed a motion for voluntary dismissal in which it contends that Zilog has prevented it from "analyz[ing] and evaluating its trade secrets claims" by withholding information in discovery. Motion for Voluntary Dismissal, p. 3. Even if ASI's characterization of Zilog's production in discovery was accurate—which it is not<sup>2</sup>—it would not excuse ASI's abject failure to describe a protectable trade secret in the first place. Since bona fide trade secret plaintiffs should be able to describe their trade secrets before engaging in discovery, the most logical inference to be drawn from ASI's pending motion is that ASI did not conduct a reasonable inquiry before it filed suit. *See Jobscience, Inc. v. CVPartners, Inc.*, C 13-04519 WHA, 2014 WL 852477, at \*5 (N.D. Cal. Feb. 28, 2014) ("A true trade secret plaintiff ought to be able to identify, up front, and with specificity the particulars of the trade secrets without any discovery.").

The fact that ASI would rather dismiss its trade secret claim than fully respond to Zilog's Interrogatory No. 3 demonstrates that ASI either (1) asserted a trade secret claim against Zilog without any reasonable basis to believe that it possessed any protectable trade secrets; or (2) should have determined early in discovery that it lacked a reasonable basis to pursue the

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<sup>2</sup> Husch Dec. at 2, ¶ 2; Dalrymple Dec. at 4-6, ¶¶ 8-10, Staubb Dec. at 5, ¶ 7.

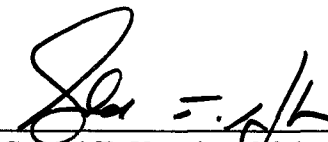
claim further. In either case, ASI has not satisfied Rule 11's reasonable inquiry standard, and Zilog respectfully submits that the Court should impose sanctions accordingly.

#### IV. CONCLUSION

ASI should have examined its own records to determine if any of its trade secrets were at issue before suing Zilog for misappropriation of trade secrets. ASI's failure to conduct this pre-filing inquiry, and its refusal to comply with the Court's discovery Orders, have prejudiced Zilog tremendously. Accordingly, Zilog respectfully requests under Rules 37 and 11 that the Court dismiss ASI's alleged cause of action for misappropriation of trade secrets, dismiss ASI's request for relief under ITSA in its other alleged causes of action and award attorney fees against ASI.

DATED this 12th day of September, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch - Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September, 2014, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF ZILOG, INC.'S RENEWED MOTION FOR SANCTIONS PURSUANT TO I.R.C.P. 37 AND MOTION FOR SANCTIONS PURSUANT TO I.R.C.P. 11(a)(1)** to be served by the method indicated below, and addressed to the following:

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COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
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Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

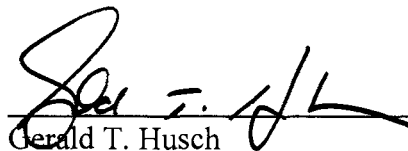
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
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Daniel W. Bower  
Chad E. Bernards  
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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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Gerald T. Husch

SEP 19 2014

CHRISTOPHER D. RICH, Clerk  
By PATRICK McLAUGHLIN  
DEPUTY

John N. Zarian, ISB No. 7390  
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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S MOTION TO CONTINUE THE  
HEARING ON ZILOG'S RENEWED  
MOTION FOR SANCTIONS  
PURSUANT TO IRCP 37 AND  
MOTION FOR SANCTIONS  
PURSUANT TO IRCP 11(a)(1)**

RELATED COUNTER ACTIONS

ORIGINAL

TR



Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, submits this motion to continue the noticed hearing on Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1) (filed, September 12, 2014) (hereinafter, "Motions for Sanctions") and noticed to be heard on September 26, 2014.

For the reasons stated herein, ASI requests that the hearing be continued to the Court's next earliest availability<sup>1</sup> in order to afford ASI a fair opportunity to review and respond, as appropriate, to the Motions for Sanctions. In the alternative, ASI requests a 14-day extension, from September 19, 2014, to respond to the Motions for Sanctions.

Pursuant to the Order Granting Stipulation Re: Case Management Deadlines (entered, May 14, 2014) mandating that all motions for summary judgment be filed at least 91 days before trial and heard at least 60 days before trial, the parties to this action filed the following motions and noticed them to be heard on September 26, 2014:

1. Motion for Summary Judgment by Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany (filed, August 28, 2014).
2. Defendant Zilog, Inc.'s Motion for Summary Judgment (filed, August 29, 2014).
3. American Semiconductor, Inc.'s Motion for Summary Judgment Re: Defendants Roberts, Yearsley and Tiffany's Counterclaims (filed, August 29, 2014).
4. American Semiconductor, Inc.'s Motion for Partial Summary Judgment Re: Claims Against Defendants Roberts, Yearsley, Tiffany and Sage Silicon Solutions, LLC (filed, August 29, 2014).

---

<sup>1</sup> Parsons Behle reached out to the Court's in-court clerk on September 16 and 17 in order to inquire regarding the Court's next availability. As of the filing of this motion, this office had yet to hear back.

In addition to the foregoing motions, defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany also filed a Motion *in Limine* to Exclude Expert Report and Testimony of Stephen Holland on August 28, 2014. This motion is noticed to be heard on September 26, 2014 as well.

At the close of business on September 12, 2014, the day that the oppositions to the dispositive motions were to be filed, defendant Zilog, Inc. ("Zilog") filed the Motions for Sanctions. Zilog did so without conferring with counsel for ASI and thus the filing took counsel for ASI by surprise. At the time Zilog filed the Motions for Sanctions, five motions were already pending and noticed to be heard on September 26, 2014 - ASI is party to each one. Consequently, by the time Zilog filed its Motions for Sanctions, ASI already had two reply deadlines in connection with the dispositive motions it filed and an opposition deadline in connection with the motion *in limine* filed by the Sage defendants, all of which fall on September 19, 2014 – the same day that ASI's oppositions to Zilog's Motions for Sanctions are due.

Given that ASI already had three motions – all filed before Zilog's Motions for Sanctions – and to which ASI was expected to file opposition or reply briefs on or before September 19, 2014, counsel for ASI sought to meet and confer with counsel for Zilog with a view towards continuing the noticed hearing on the Motions for Sanctions so as to allow ASI adequate time to fully and appropriately respond thereto. Attached hereto as **Exhibit A** is a true and correct copy of the e-mail exchange between counsel from September 16, 2014. As set forth in the e-mail exchange, Zilog declined ASI's request.

In light of the nature and schedule of the briefing on the three motions at issue, it would be prejudicial to maintain the presently noticed hearing on the Motions for Sanctions and the attendant briefing schedule. Under the circumstances, ASI submits that maintaining the current

hearing date and briefing schedule will deprive it of a fair opportunity to review and prepare appropriate responses to the Motions for Sanctions. Because Zilog declined to accommodate ASI's request, ASI has thus been compelled to file the instant motion.

DATED this 19th day of September, 2014.

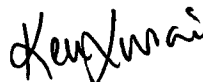
PARSONS BEHLE & LATIMER

By Kendras  
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 19th day of September, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Email: dbower@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Email: srt@moffatt.com gth@moffatt.com



Kennedy K. Luvai

## **EXHIBIT A**

## Vicky Mallon

---

**From:** Kennedy K. Luvai  
**Sent:** Tuesday, September 16, 2014 5:42 PM  
**To:** Gerry Husch  
**Cc:** gary@cooper-larsen.com; barbie@cooper-larsen.com; Chad Bernards; John N. Zarian; Sarah H. Arnett; Cathy Pontak; Vicky Mallon  
**Subject:** Re: ASI v. Sage et al - Motion for Sanctions [MT-C.FID619553]

Thanks Gerry. The hearing date was settled upon weeks back and long before Zilog filed its motion for sanctions a few days ago, so I am not sure how that changes anything. With your response, as I understand it, we have no option but to seek leave of court to continue the hearing on Zilog's (satellite) motion, which we will do at our earliest.

Sent from my iPhone

> On Sep 16, 2014, at 5:33 PM, "Gerry Husch" <[GTH@moffatt.com](mailto:GTH@moffatt.com)> wrote:

>  
> Kennedy,  
>  
> I assume you still don't know on what alternative date Zilog's motion might be heard. As I recall, your office picked September 26 for the hearing, and the Court has reserved three hours for the hearing. In addition, Judge Neville's docket has been extremely heavy and hearing dates have been few and far between. Most importantly, however, I think Zilog's motion must be heard before the mediation. Thus, I am truly sorry that I am unable to accommodate your request. However, if you seek leave of the Court to move the hearing, I will try to file my opposition as quickly as possible.

>  
> Gerry  
>  
> Gerald T. Husch  
> Attorney  
>  
> Direct 208 385 5406  
> Main 208 345 2000  
> Fax 208 385 5384  
> [GTH@moffatt.com](mailto:GTH@moffatt.com)  
> <http://www.moffatt.com>

>  
>  
> 101 S. Capitol Blvd., 10th Floor  
> P.O. Box 829  
> Boise, ID 83701-0829

> -----Original Message-----

> From: Kennedy K. Luvai [<mailto:KLuvai@parsonsbehle.com>]  
> Sent: Tuesday, September 16, 2014 9:54 AM  
> To: Gerry Husch  
> Cc: [gary@cooper-larsen.com](mailto:gary@cooper-larsen.com); [barbie@cooper-larsen.com](mailto:barbie@cooper-larsen.com); Chad Bernards; John N. Zarian; Sarah H. Arnett; Cathy Pontak; Vicky Mallon  
> Subject: ASI v. Sage et al - Motion for Sanctions

>  
> Gerry,  
>

> We are in receipt of Zilog's renewed motion for sanctions which was delivered to us at the close of business on Friday. I might have missed it but I don't think I saw any communication from your office seeking to meet and confer, or otherwise provide us with prior notice of the intended filing. In other words, the filing was unexpected from our standpoint. Needless to say, we have three other motions that we are to file opposition or reply briefs, all filed before yours. Please let us know by close of business today, if at all possible, whether you are amenable to continuing the hearing on the motion for sanctions to the next available court date. We are checking with the court to see when that would be, and are hopeful that we are talking about an extension of a couple of weeks. We will let you as soon as we hear back.

>

> Best Regards,

>

> Kennedy

>

> Sent from my iPad.

> Kennedy K. Luvai | Attorney at Law | Registered Patent Attorney

> 800 W. Main Street, Suite 1300 | Boise, Idaho 83702 Main 208.562.4900 | Direct 208.562.4892 | Cell 208.863.0508  
parsonsbehle.com

>

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Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
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25332.0000

Attorneys for Defendant Zilog, Inc.

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 450

SEP 19 2014

CHRISTOPHER D. RICH, Clerk  
By JAMIE MARTIN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**REPLY MEMORANDUM IN SUPPORT  
OF DEFENDANT ZILOG, INC.'S  
MOTION FOR SUMMARY  
JUDGMENT**



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## I. INTRODUCTION

Defendant Zilog, Inc. ("Zilog") moved for summary judgment against plaintiff American Semiconductor, Inc. ("ASI") on all of the causes of action alleged by ASI against Zilog in ASI's Second Amended Complaint ("SAC"), which are ASI's:

- Fifth Cause of Action (Tortious Interference with Prospective Economic Advantage and Contract),
- Sixth Cause of Action (Idaho Trade Secret Act Violation),
- Eighth Cause of Action (Unjust Enrichment),
- Tenth Cause of Action (Declaratory Relief), and
- Eleventh Cause of Action (Injunctive Relief).

ASI did not oppose Zilog's motion for summary judgment on ASI's Sixth Cause of Action (Idaho Trade Secret Act Violation) or argue that Zilog misappropriated any information that meets the definition of a "trade secret" under the Idaho Trade Secrets Act ("ITSA"); rather, ASI has filed its own motion seeking the voluntary dismissal of those causes of action. *See* American Semiconductor, Inc.'s Motion for Voluntary Dismissal of Its Trade Secret Misappropriation, Improper Appropriation of Name, Consumer Protection and Injunctive Relief Claims ("ASI's Motion for Voluntary Dismissal") (filed August 19, 2014).<sup>1</sup>

Nor has ASI opposed Zilog's summary judgment on ASI's other claims for remedies under ITSA, *i.e.* (a) those portions of ASI's Tenth Cause of Action (Declaratory Relief) in which ASI seeks to recover a "royalty" against Zilog "pursuant to the Idaho Trade Secrets Act," SAC at 18, ¶ 126, or (b) that portion of ASI's Eighth Cause of Action (Unjust Enrichment) in which ASI apparently seeks damages for unjust enrichment under ITSA on the theory that "Zilog has received a benefit in the form of ASI's trade secrets and other protectable interest" "without

---

<sup>1</sup> ASI has sought dismissal of its Sixth Cause of Action (Idaho Trade Secret Act Violation) without prejudice or award of costs or attorney fees. Thus, it is undisputed that Zilog is entitled to dismissal of ASI's misappropriation of trade secret claims against Zilog.

American Semiconductor's consent," SAC at 16-17, ¶¶ 110-11, or (c) that portion of ASI's Eleventh Cause of Action (Injunctive Relief) in which ASI seeks injunctive relief preventing Zilog "from utilizing or disclosing American Semiconductor's 'Inventions' or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such 'Inventions' or trade secrets." SAC at 19, ¶ 131. Because ASI cannot prove misappropriation of a trade secret, it is not entitled to a remedy *under ITSA* in its Eighth, Tenth, and Eleventh Causes of Action.

Nor has ASI opposed Zilog's motion for summary judgment on ASI's unjust enrichment claim (ASI's Eighth Cause of Action), ASI's claim for an assignment of rights (ASI's Tenth Cause of Action), and ASI's claim for injunctive relief (ASI's Eleventh Cause of Action) against Zilog. ASI has offered no opposition to Zilog's argument that insofar as ASI's Eighth, Tenth, and Eleventh Causes of Action seek relief for misappropriation of a trade secret or other confidential information *under common law* tort, restitutionary or other non-contract principles, those claims and causes of action are displaced (preempted) by ITSA.

Nor has ASI opposed Zilog's motion for summary judgment on ASI's Eleventh Cause of Action (Injunctive Relief), and ASI has filed its own motion seeking dismissal of its Eleventh Cause of Action. *See* ASI's Motion for Voluntary Dismissal.

Nor has ASI opposed Zilog's motion for summary judgment on two (2) of the four (4) claims for relief alleged in ASI's Fifth Cause of Action (Tortious Interference with Prospective Economic Advantage). In its Fifth Cause of Action, ASI asserted three (3) claims of tortious interference with contract against Zilog based on (i) the "Trade Secrets and Confidential Information" provisions (Section 2), (ii) the "Assignment of Inventions" provisions (Section 4) and (iii) the noncompetition provisions (Section 7) of ASI's Employee Confidentiality

Agreements ("ECAs") with the Individuals.<sup>2</sup> ASI did not oppose Zilog's motion for summary judgment on the tortious interference with contract claims based on (i) the "Trade Secrets and Confidential Information" provisions (Section 2) or (ii) the Assignment of Invention provisions (Section 4) of the ECAs. However, ASI did not oppose Zilog's motion for summary judgment on ASI's claim of tortious interference with contract against Zilog based on the noncompetition provisions (Section 7) of the ECAs. ASI also opposed Zilog's motion for summary judgment on the fourth tortious interference claim alleged by ASI in its Fifth Cause of Action, which was a claim of tortious interference with prospective economic advantage.

Based on ASI's lack of opposition to Zilog's motion and/or ASI's own Motion for Voluntary Dismissal, Zilog is entitled to summary judgment on *all* of the claims for relief set forth in ASI's Sixth Cause of Action (Idaho Trade Secret Act Violation), Eighth Cause of Action (Unjust Enrichment), Tenth Cause of Action (Declaratory Relief), and Eleventh Cause of Action (Injunctive Relief), as well as two (2) of the four (4) claims for relief alleged in ASI's Fifth Cause of Action (Tortious Interference with Prospective Economic Advantage and Contract).

Currently at issue is whether Zilog is entitled to summary judgment on ASI's claim of tortious interference with the noncompetition provisions (Section 7) of the ECAs and ASI's claim for tortious interference with prospective economic advantage. In this reply memorandum, Zilog will again demonstrate that it is entitled to summary judgment on ASI's remaining tortious interference claims because they seek civil liability remedies for alleged misappropriation of a trade secret or other confidential information and are therefore *displaced* by ITSA. In addition, Zilog will demonstrate that it is entitled to summary judgment on ASI's remaining tortious interference claims for other, independent reasons:

---

<sup>2</sup> See Declaration of Gerald T. Husch in Support Zilog, Inc.'s Motion for Summary Judgment ("Husch Dec."), Ex. B (ASI's ECA).

(a) Zilog is entitled to summary judgment on ASI's claim of tortious interference with the noncompetition provisions of the ECAs because ASI cannot establish an essential element of its case, *i.e.*, that Zilog had knowledge of the ECAs and knowledge that contracting with Sage was interfering with the Individuals' performance of the ECAs' noncompetition provisions, and ASI cannot rely upon any alleged standard industry practice or duty of inquiry in its attempt to establish knowledge of the ECAs or the noncompetition provisions.

(b) Zilog is entitled to summary judgment on ASI's claim of tortious interference with prospective economic advantage because Zilog, as the entity with which ASI hoped to contract and to which ASI hoped to provide design services utilizing the Individuals, was not a stranger to ASI's alleged economic expectancy, *i.e.*, ASI cannot maintain a claim of tortious interference with prospective economic advantage against a party to the prospective economic relationship.

(c) Zilog is entitled to summary judgment on ASI's claim of tortious interference with prospective economic advantage because ASI cannot establish an essential element of its case, *i.e.*, ***that ASI ever had a valid economic expectancy, rather than a mere hope, of doing business with Zilog.***

## II. ARGUMENT

### A. **Zilog Is Entitled to Summary Judgment on ASI's Sixth Cause of Action (ITSA Violation) Because ASI Cannot Establish that Zilog Misappropriated Any Information that Meets the Definition of a "Trade Secret" Under ITSA.**

In its Sixth Cause of Action (Idaho Trade Secret Violation), ASI alleges that Zilog violated ITSA, on the theory that "Zilog obtained [ASI's] trade secrets and/or other protectable interests inherent in the design services rendered by the Individuals," and seeks relief against Zilog in the form of monetary damages, disgorgement of any benefit received by Zilog, a royalty for the unauthorized use of ASI's trade secrets and/or other protectable interests, and exemplary

damages. SAC at 15, ¶¶ 97-99. Zilog moved for summary judgment on ASI's Sixth Cause of Action because ASI had an adequate time for discovery and still failed to establish an essential element of its claim for relief, *i.e.*, that any of the ASI confidential information allegedly misappropriated by Zilog constituted a "trade secret." ASI has not opposed Zilog's motion for summary judgment on ASI's Sixth Cause of Action, so Zilog respectfully submits that it is entitled to summary judgment on ASI's Sixth Cause of Action.

**B. Zilog Is Entitled to Summary Judgment on Those Portions of ASI's Eighth Cause of Action (Unjust Enrichment), Tenth Cause of Action (Declaratory Relief) and Eleventh Cause of Action (Injunctive Relief), in Which ASI Seeks a Remedy Under ITSA or Relief Based on the Theory that Zilog Misappropriated ASI's Trade Secrets, Because ASI Cannot Establish that Zilog Misappropriated Any Information that Meets the Definition of a "Trade Secret" Under ITSA.**

In its Eighth Cause of Action (Unjust Enrichment), Tenth Cause of Action (Declaratory Relief) and Eleventh Cause of Action (Injunctive Relief), ASI seeks unjust enrichment, a royalty, and declaratory and injunctive relief under ITSA or based on the theory that Zilog misappropriated ASI's trade secrets.<sup>3</sup> Zilog moved for summary judgment on these claims

---

<sup>3</sup> In its Eighth Cause of Action (Unjust Enrichment), ASI seeks to recover for unjust enrichment under ITSA (Idaho Code Section 48-803(1)) on the theory that "Zilog has received a benefit in the form of ASI's trade secrets and other protectable interest as a direct result of its solicitation and/or acceptance of services from the Individuals and Sage," and "[i]t would be inequitable for Zilog to retain such benefits when such benefits were received without American Semiconductor's consent and/or a result of Zilog's interference with American Semiconductor's prospective economic advantage and contract." SAC at 16-17, ¶¶ 110-11.

In its Tenth Cause of Action (Declaratory Relief), ASI seeks to recover a royalty under ITSA (Idaho Code Section 48-803(1)) on the theory that "pursuant to the Idaho Trade Secrets Act, American Semiconductor may be entitled to a reasonable royalty for all 'Inventions' incorporated into Zilog products, as such 'Inventions' include trade secrets or other protectable interests owned by American Semiconductor." SAC at 18, ¶ 126.

In its Eleventh Cause of Action (Injunctive Relief), ASI seeks injunctive relief under ITSA (Idaho Code Section 48-802) on the theory that ASI is entitled to preliminary or permanent injunctive relief preventing "Zilog from utilizing or disclosing American Semiconductor's 'Inventions' or trade secrets, including prohibiting the sale of any product which incorporates or was created improperly utilizing such 'Inventions' or trade secrets." SAC at 19, ¶ 131.

because ASI had an adequate time for discovery and cannot establish an essential element of its claim for relief, *i.e.*, that any of the ASI confidential information allegedly misappropriated by Zilog constituted a “trade secret.” ASI has not opposed Zilog’s motion for summary judgment on these claims, so Zilog respectfully submits that it is entitled to summary judgment accordingly.

**C. Insofar as ASI Is Seeking Relief for Misappropriation of a Trade Secret or Other Confidential Information Under Common Law Tort, Restitutionary or Other Non-contract Principles, Zilog Is Entitled to Summary Judgment on ASI’s Tortious Interference Claims (ASI’s Fifth Cause of Action), ASI’s Unjust Enrichment Claim (ASI’s Eighth Cause of Action), ASI’s Claim for an Assignment of Rights (ASI’s Tenth Cause of Action), and ASI’s Claim for Injunctive Relief (ASI’s Eleventh Cause of Action) Because Those Claims Are Displaced (Preempted) by ITSA.**

Idaho Code Section 48-806 of ITSA (the “displacement provision”) is identical to Section 7 of the Uniform Trade Secrets Act and explains ITSA’s effect on other law:

*Except as provided in subsection (2) of this section, this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil liability remedies for misappropriation of a trade secret.*

IDAHO CODE § 48-806(i) (emphasis added).

ITSA (like Section 7 of UTSA) preempts all claims for relief, including both common law and statutory causes of action, providing a civil remedy for misappropriation of a trade secret *unless* the remedy is contractual or criminal in nature. IDAHO CODE § 48-806. In support, Zilog cited to two cases: *Microstrategy, Inc. v. Bus. Objects, S.A.*, 429 F.3d 1344, 1363 (Fed. Cir. 2005) (“When read together, sections A and B, preempt *all* claims for relief, including both common law and statutory causes of action, if they provide a civil remedy for misappropriation of trade secrets *unless* they are contractual or criminal in nature.”) (emphasis original), and *Chatterbox, LLC v. Pulsar Ecoproducts, LLC*, 2007 WL 1388183, at \*4 (D. Idaho May 9, 2007). In *Chatterbox*, Idaho’s federal court explained that “it is appropriate for courts applying Idaho law to follow the majority view in interpreting the displacement provision,” which is that UTSA

“preempts claims that are based upon the unauthorized use of information, regardless of whether that information meets the statutory definition of a trade secret”:

Idaho Code Section 48-406 when “viewed in the context of the overall legislative scheme and construed in a manner that effectuates the purpose of making uniform the law among States that have adopted the UTSA, provides that the NHUTSA preempts claims that are based upon the unauthorized use of information, regardless of whether that information meets the statutory definition of a trade secret”). Because the Idaho Legislature’s purpose in enacting the ITSA was to promote the goal of uniformity, it is appropriate for courts applying Idaho law to follow the majority view in interpreting the displacement provision. See SB 1026, 1981 Idaho Laws Ch. 220 § 1 (Statement of Purpose) (stating that the ITSA is “designed to give certainty to the otherwise vague and uncertain law of trade secrets,” and that “[b]y increasing certainty, it should reduce the amount of litigation in Idaho’s courts.”); SB 1448, 1990 Idaho Laws Ch. 274, § 3 (Statement of Purpose) (explaining that the stated purpose was to “improve the [ITSA] and to continue our goal of uniformity”).

*Id.*, at \*3.

In its Fifth Cause of Action, ASI alleges two claims for relief against Zilog: (1) tortious interference with contract based on ASI’s allegations that “Zilog was aware of the existence of the Employee Confidentiality Agreements between the Individuals and American Semiconductor” and that “Zilog tortiously interfered with the Employee Confidentiality Agreements *by soliciting or accepting design services* from the Individuals in violation of the Individuals’ respective contractual obligations to American Semiconductor under the Employee Confidentiality Agreements,” SAC at 13-14, ¶¶ 88-89 (emphasis added), and (2) tortious interference with ASI’s prospective economic advantage, “including depriving American Semiconductor of the opportunities to earn income from the Individuals’ design services.” SAC at 14, ¶ 90.

In its opposition brief ASI fails to address the impact of Section 48-806 or the holdings of *Microstrategy* or *Chatterbox* on its tortious interference claims. Instead, ASI states, without citation to a single authority, that “[a]s shown by the foregoing statement of facts supporting both of ASI’s tortious interference claims against Zilog, and as will be further demonstrated below,



neither of ASI's tortious interference claims is based upon, seeks remedy for, or in any way relies upon misappropriation of trade secret or other confidential information." ASI Opp. Memo. at 17.

ASI's conclusory assertion less than three months before trial directly contradicts the assertions it made in July 2014, when arguing to this Court that it was entitled to amend its complaint to add a claim for punitive damages with regard to its tortious interference claims. As to Zilog, ASI based its alleged entitlement to punitive damages solely on its tortious interference claims.<sup>4</sup> In support of ASI's argument that it was entitled to submit the issue of punitive damages to the jury with regard to its tortious interference with contract claim, ASI asserted that "[i]n contracting with Sage for Roberts, Yearsley, and Tiffany's microcontroller design services, Zilog knowingly and intentionally wrongfully interfered with and induced the individual defendants to breach their non-disclosure and non-compete obligations under their ASI ECAs" and that "*Zilog's interference with Roberts, Yearsley, and Tiffany's non-disclosure and non-compete obligations in order to obtain ASI's technology without ASI's consent and at well below ASI's actual cost does not constitute legitimate competition.*" July 7, 2014, Memorandum in Support of Plaintiff American Semiconductor, Inc.'s Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages at 23-24 (emphasis added).

In fact, ASI has advanced this argument since its very *first* written communication with Zilog, nearly three years ago, on September 27, 2011. At that time, ASI caused its then counsel to send Zilog a cease and desist letter. The very first sentence of that letter provides: "This firm

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<sup>4</sup> See Memorandum In Support of Plaintiff American Semiconductor, Inc.'s Motion to Amend Second Amended Complaint to Add Prayer For Punitive Damages ("ASI Punitive Memo.") at 2 ("For purposes of this motion to amend, and in the interest of brevity, ASI has elected to focus its discussion on the first five claims for relief, namely, (i) the breach of contract and breach of fiduciary duty claims against the individual defendants, (ii) the breach of implied covenant and tortious interference claims against Sage and the individual defendants, *and (iii) the tortious interference claim against Zilog.*") (emphasis added).

has been retained to represent American Semiconductor in connection with *enforcement of its intellectual property rights and trade secrets*, as well as the Employee Confidentiality Agreement entered into between American Semiconductor and its employees.” See September 12, 2014, Declaration of Dan Eaton in Support of Zilog, Inc.’s Renewed Motion For Sanctions Pursuant to I.R.C.P. 37 & Motion For Sanctions Pursuant to I.R.C.P. 11(a)(1) (“Eaton Dec.”), Ex. A at 1 (demand letter) (emphasis added). The very first section of the ECAs themselves provide that the “purpose” of the ECAs is to protect ASI’s “business and its methods of operation, *technology, information* and relationships with its suppliers and customers.” Husch Dec. Ex. B (ASI’s ECA) at 1 (emphasis added).

ASI is estopped from now denying that ASI’s claims against Zilog are inextricably intertwined with ASI’s bald assertion that simply because the same Individuals performed design services for Zilog (as members of Sage) at the same time they also performed design services for ASI, there *must* have been an improper exchange of ASI’s intellectual property and trade secrets. ASI’s claim that Zilog tortiously interfered with ASI’s rights under the noncompetition provisions of Section 7 of the ECAs is nothing more than a claim as to how Zilog allegedly induced the Individuals to misappropriate ASI’s trade secrets in violation of ITSA and ASI’s trade secrets and other confidential information in violation of the “Trade Secrets and Confidential Information” provisions (Section 2) and the “Assignment of Inventions” provisions (Section 4) of the ECAs. This claim is rooted in the same nucleus of facts as ASI’s claim of misappropriation of trade secrets. The same is true of ASI’s claim of tortious interference with prospective economic advantage, which is a claim that Zilog induced the Individuals to provide ASI’s trade secrets and other confidential information to Zilog and deprived ASI of the opportunity to do so.

ASI's claim that Zilog tortiously interfered with ASI's rights under the noncompetition provisions of the ECAs, like ASI's claim that Zilog tortiously interfered with ASI's prospective economic expectancy, are displaced (or preempted) by ITSA, specifically Idaho Code Section 48-806(1), because they arise out of the same nucleus of facts as ASI's claims for misappropriation of its alleged trade secrets and other confidential information.

**D. ASI's Tortious Interference Claims (Fifth Cause of Action) Fail for Additional Independent Reasons.**

In its opposition briefing, ASI relies primarily on the holding in *Highland Enter., Inc. v. Barker*, 133 Idaho 330, 339, 986 P.2d 996, 1005 (1999). ASI ignores that the Court in *Highland*, like a number of jurisdictions, cites to comment i to Section 766 of the Restatement (Second) of Torts, in addressing a party's knowledge of the other's contract. That section provides, in pertinent part, as follows:

*i. Actor's knowledge of other's contract.* To be subject to liability under the rule stated in this Section, ***the actor must have knowledge of the contract with which he is interfering and of the fact that he is interfering with the performance of the contract.*** Although the actor's conduct is in fact the cause of another's failure to perform a contract, ***the actor does not induce or otherwise intentionally cause that failure if he has no knowledge of the contract.*** . . .

RESTATEMENT (SECOND) OF TORTS § 766, cmt. [i] (bold italics added). The language of Comment i explicitly requires two separate forms of knowledge: "knowledge of the contract with which he is interfering ***and*** [knowledge] of the fact that he is interfering with the performance of the contract." *Id.*

First, there is no evidence in the case at bar that Zilog had actual or constructive knowledge of the ECAs. The Individual Defendants each testified that they never told anyone at Zilog that they were employees of ASI. *See* Opposition to Plaintiff's Motion to Amend To Add Prayer For Punitive Damages, p. 12, ¶ 28. A review of Russell Lloyd, David Staab, Sonia Daley, and Sean Beck's actual testimony does not support ASI's contention, but shows that the

witnesses did not know whether the Individuals were ASI employees or independent contractors.

<sup>5</sup> Not a single witness has testified that they knew or conveyed to Zilog that the Individuals had signed ECAs with ASI that would prohibit the Individuals from providing services to Sage.

Without knowledge of the specific contractual right allegedly interfered with, Zilog cannot be deemed to have intentionally interfered with that right. ASI's attempt to dilute the knowledge requirement—by imposing a heightened duty of inquiry on the part of Zilog based upon Doug Hackler's self-serving testimony regarding Zilog's alleged knowledge of the Individuals' employment with ASI—is too attenuated to sustain a finding of knowledge or constructive knowledge of the ECAs or their specific terms.

ASI fails to address the holding in *Anesthesia Services v. Anesthesia Advantage*, N11C 03-005 MJB (Del. Super. June 27, 2013). The standard in Delaware is nearly identical to the standard in Idaho. Like in Idaho, “[t]he record must clearly demonstrate that the defendant possessed actual or imputed knowledge to satisfy this element of the tort.” *Id.* at 10 (citing to the Restatement (Second) of Torts, § 766, cmt i “that to establish the knowledge element in the tortious interference with contract cause of action, [Plaintiff] must establish that [Defendant] knew of the contract generally and knew of the particular restriction.”). The court considered and rejected the exact argument proffered by ASI here—the argument that evidence of an alleged

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<sup>5</sup> See Second Affidavit of Sarah H. Arnett in Support of Oppositions to Motion For Summary Judgment, Ex. E (Staab Dep.) 167:22 – 168:4 (Staab understood that “the members of the Sage team” “were doing *some contract work* for American Semiconductor”) (emphasis added); S. Beck Dep. 46:1-8 (“I knew they [Yearsley, Tiffany, Lloyd and Roberts] worked there [at ASI]. *I didn't know they were employed there.*”) (emphasis added); S. Daley Dep. 42:10-14 (When asked if she had been “informed that Yearsley, Roberts, Tiffany, and Lloyd were once employed by ASI,” S. Daley responded, “[I] knew that they worked for ASI *in some capacity.*”) (emphasis added). See also Declaration of Gerald T. Husch In Opposition to Plaintiff's Motion to Amend To Add Prayer For Punitive Damages, Ex. J Dep. Ex. 17 (12/7/09 e-mail from D. Roberts to D. Staab, stating, “we are getting some action here working *with* American Semiconductor” and inviting Staab to visit Sage's website at [www.sagesiliconsolutions.com](http://www.sagesiliconsolutions.com)) (emphasis added).

“industry-wide standard” of incorporating non-competes into employment agreements can be used to impose a duty upon a defendant hiring an individual in the industry to inquire as to the specific provisions of the individual’s prior employment agreement. *Id.*, at 14.<sup>6</sup>

None of the authorities cited by ASI addresses the issue presented here—whether knowledge can be imputed through industry standard. Even more attenuated, ASI does not cite to a single authority for the proposition that when retaining a separate legal entity (such as Sage) there exists a duty to vet the entities employees or members.

Second, there is no evidence that Zilog knew that contracting with Sage or utilizing Sage’s services interfered with Sage’s members’ confidentiality and trade secret, noncompetition, assignment of invention or other provisions of their ECAs. Douglas Hackler testified that he never discussed any of the terms of the Employee Confidentiality Agreements that ASI had with Messer’s Yearsley, Tiffany, Roberts, or Lloyd with Mr. White. Similarly, Mr. Hackler testified that he never told Mr. White whether or not ASI had hired Messer’s Yearsley, Tiffany, Roberts or Lloyd as part-time or full-time employees. *See* Deposition of Douglas R. Hackler, 181:1-24.

Since ASI did no more to vet the Individuals when hiring them as employees than Zilog did to vet Sage and the Individuals when retaining Sage as a vendor and independent contractor, ASI can hardly claim that Zilog should have made further inquiries. Furthermore, when hiring vendors, ASI simply had the vendors sign a non-disclosure agreement. *Husch Dec. Ex. K* (L. Hackler Depo.) 96:23 – 97:15.

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<sup>6</sup> ASI’s conclusory statement that non-competes are “industry standard” is taken out of context. A number of ASI’s “customers” and “competitors” in the industry are headquartered in the Silicon Valley in California. With limited exceptions not applicable here, non-compete agreements are void ab initio in California. *See* CAL. BUS. & PROF. CODE § 16600 (“every contract by which anyone is restrained from engaging in a lawful profession, trade, or business, of any kind is to that extent void.”).

**E. Zilog Is Entitled to Summary Judgment on ASI's Claim of Tortious Interference with Prospective Economic Expectancy (ASI's Fifth Cause of Action) Because a Defendant Cannot Interfere with a Plaintiff's Prospective Economic Relationship with that Same Defendant.**

ASI must prove, *inter alia*, "the existence of a valid economic expectancy" to establish a claim of tortious interference with prospective economic advantage. *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 155 Idaho 55, 64, 305 P.3d 499, 508 (2013). "[A] prospective contractual relation . . . is something less than a contractual right, something more than a mere hope." *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 209, 412 A.2d 466, 471 (1980).

It is axiomatic that in order to establish the first element of tortious interference with a prospective economic expectancy the plaintiff must identify a specific person, other than the person who is accused of tortious interference, who actually considered entering into a business relationship with the plaintiff, but did not as a result of defendant's interference.

Courts have routinely dismissed claims for tortious interference with a business expectancy where the "expectancy" is merely hoped for or speculative. The prospective economic expectancy that is the subject of ASI's claim *can only* be ASI's hope of doing work for Zilog, because "[t]he only work that was performed by the Defendants working through Sage was the design verification work performed for Zilog, Inc." Husch Dec. Ex. E (Depo. Ex. 4) at 10.<sup>7</sup> In other words, ASI's only conceivable claim that Zilog interfered with ASI's prospective economic advantage "by depriving [ASI] of opportunities to earn income from the Individuals' design services," must be based on the fact that Zilog retained Sage, rather than ASI, to work for Zilog. Zilog is not an outsider to ASI's alleged economic expectancy, but a critical party to that expectancy. Here, no matter which way ASI attempts to spin it, the only economic

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<sup>7</sup> Sage stopped working on the Zilog project in late September 2011 and did not transact any business whatsoever in 2012, 2013, or 2014. Husch Dec. Ex. F. (D. Roberts Depo.) 383:24 – 384:6; 322:6-12.

expectancy it claims is the economic expectancy to obtain money from Zilog by ASI, rather than Sage, contracting with Zilog to provide Zilog with design services to be rendered by the Individuals.

**F. Zilog Is Entitled to Summary Judgment on ASI's Claim of Tortious Interference with Prospective Economic Advantage (ASI's Fifth Cause of Action) Because ASI Did Not Have a Valid Economic Expectancy of Doing Business with Zilog.**

In this case, ASI's prospective economic advantage or contractual relation with Zilog is nothing more than a "mere hope." ASI continues to misstate the record before this Court to support its theory that Zilog *was required to* use Roberts, Yearsley, Russell, Lloyd, and Perryman to perform the design services. In fact, despite being presented with direct evidence to the contrary, ASI continues to represent to this Court that (1) Zilog could not have done the work without the Individuals, and (2) therefore, Zilog would have had no choice but to pay ASI's exorbitant rates to complete its project.

There is no evidence to support ASI's contention that Zilog would have paid ASI more than four times as much per hour for the exact same design engineers to perform the work to Zilog through ASI as opposed to Sage. The undisputed evidentiary record establishes that when Dave Roberts first offered ASI's services to Zilog in 2009, Zilog did not want to go in the direction ASI wanted to go. Husch Dec. Ex. G. (Depo. Ex. 11). ASI admitted that if ASI "wanted to do design work for Zilog," ASI would have approached Staab or Sheridan, *id.*, Ex. I (D. Wilson Depo.) 198:1-5, and there is no evidence that ASI contacted either of them. Likewise, there is no evidence that ASI ever submitted to Zilog a quote or bid for the work done by Sage. Moreover, according to ASI's after-the fact proposed but undelivered quote, ASI would have charged Zilog \$454,801 for 1908 hours of design engineering—or over \$238 per hour—for design engineering services. Declaration of David R. Staab in Opposition to Plaintiff's Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages

(“Staab Dec.”) at 3, ¶ 6, and Ex. C. Mr. Staab has testified that if he had received a quote or bid from ASI to perform design engineering services at the rate of \$238 per hour, Staab would not have retained ASI to provide Zilog with any such services (or other services provided by Sage) because ASI’s hourly rate of \$238 was too high a rate to have been acceptable. *Id.* at 3, ¶ 7. Mr. Staab had caused Zilog to retain Sage and compensate Sage at rates of \$45 to \$65 per hour for the services performed by Sage. *Id.* at 3, ¶ 7.

ASI’s argument that Zilog was required to use the Individual Defendants to perform the design services on this project is undercut by several facts. First is the fact that Zilog finished the project without the Individuals’ assistance after Sage left the project in September 2011. Second is the fact that ASI fired the Individual Defendants on September 27, 2011, which is the same day ASI offered to complete the project for Zilog. Eaton Dec. Ex. A at 3. If the Individual Defendants’ design services were critical to Zilog on this project, how did ASI intend to complete the project without them? Third is the fact that Zilog did not accept ASI’s offer and instead, used IXYS to ultimately completed, the Zilog project. *See* Memo Opposing ASI’s Motion for Partial Summary Judgment Re: Claims Against Roberts, Yearsley, Tiffany and Sage, p. 3; Staab Depo, 136:7-136:15. Fourth is the fact that ASI has introduced no evidence to show that Zilog could not have obtained the services of other ex-Zilog Z8 design engineers such as Monte Dalrymple to complete the project, at a much lower cost than \$238 per hour. Finally, ASI has no evidence that Zilog would not have cancelled the project rather than pay \$238 per hour for ASI’s services.

DATED this 19th day of September, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By 

Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of September, 2014, I caused a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF DEFENDANT ZILOG, INC.'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

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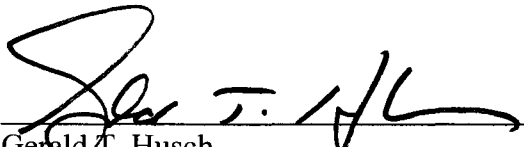
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Gerald T. Husch

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A.M. \_\_\_\_\_ FILED P.M. 12**SEP 19 2014**CHRISTOPHER D. RICH, Clerk  
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
 an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
 Idaho Corporation; ZILOG, INC., a  
 Delaware Corporation; DAVID ROBERTS,  
 GYLE YEARSLEY, WILLIAM TIFFANY  
 and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**JOINDER WITH ZILOG, INC.'S  
 RENEWED MOTION FOR  
 SANCTIONS PURSUANT TO  
 I.R.C.P. 37 AND MOTION FOR  
 SANCTIONS PURSUANT TO  
 I.R.C.P. 11(a)(1)**

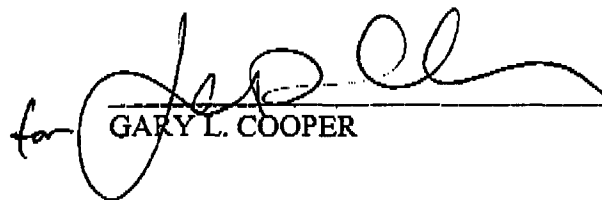
RELATED COUNTER ACTIONS

Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany (collectively the "Sage Defendants") hereby join Defendants Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1).

American Semiconductor, Inc. ("ASI") alleged the same Idaho Trade Secret Act violation against the Sage Defendants and Zilog, Inc. ("Zilog"). Second Amend. Comp., ¶¶ 94-99. Zilog's memorandum in support of the renewed motions and the supporting documentation demonstrate that ASI failed to abide by the Court's discovery orders regarding the proper disclosure of ASI's alleged trade secret and that ASI did not have a reasonable basis in fact or law to believe that any defendant violated the Idaho Trade Secret Act. The Sage Defendants spent significant time and resources defending the alleged violation of the Idaho Trade Secret Act and continued to do so even after ASI failed to comply with the Court's deadline for ASI to supplement its discovery responses. ASI's failure to comply with the Court's discovery orders and to pursue the trade secret claim without any factual basis has significantly increased the cost of defending this action. Therefore, the Sage Defendants join Zilog's Renewed Motions for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1).

DATED this 22 day of September, 2014.

COOPER & LARSEN

  
for \_\_\_\_\_  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of September, 2014, I served a true and correct copy of the foregoing to:

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A.M. 10FILED  
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S OPPOSITION TO  
AMERICAN SEMICONDUCTOR,  
INC.'S MOTION TO CONTINUE THE  
HEARING ON ZILOG'S RENEWED  
MOTION FOR SANCTIONS  
PURSUANT TO IRCP 37 AND  
MOTION FOR SANCTIONS  
PURSUANT TO IRCP 11(a)(1)**

**ZILOG, INC.'S OPPOSITION TO AMERICAN SEMICONDUCTOR, INC.'S MOTION  
TO CONTINUE THE HEARING ON ZILOG'S RENEWED MOTION FOR  
SANCTIONS PURSUANT TO IRCP 37 AND MOTION FOR SANCTIONS PURSUANT  
TO IRCP 11(a)(1) - 1**

Client: 3569492.2

001086

On Friday, September 19, 2014, Plaintiff American Semiconductor, Inc., filed American Semiconductor, Inc.'s Motion to Continue the Hearing on Zilog's Renewed Motion for Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1) ("ASI's Motion"). ASI cites two primary reasons in support of ASI's Motion: (1) that the filing of Zilog's Renewed Motion for Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1) ("Zilog's Renewed Motion for Sanctions")—without first conferring with ASI—took ASI by surprise; and (2) that in light of the nature and schedule of the briefing on the other motions before this Court, ASI would suffer prejudice if Zilog's Renewed Motion for Sanctions were heard. Zilog opposes ASI's Motion for several reasons.

First, Zilog respectfully submits that ASI cannot credibly claim to be surprised by Zilog's filing of Zilog's Renewed Motion for Sanctions. The Court, in its ruling from the Bench on July 18, 2014, on Zilog's original Motion for Sanctions (filed July 3, 2014), ordered ASI to supplement its response to Zilog's Interrogatory No. 3 (to describe with reasonable specificity each and every trade secret or trade secrets owned by ASI) by August 4, 2014. *See* July 18, 2014 Reporter's Transcript of Proceedings, ("July 18 Tr.") 49:22 – 50:14. At the hearing, this Court held that ASI was already in violation of this Court's prior discovery order (the June 18, 2014 Order Regarding Zilog, Inc.'s Motion to Compel). The Court then advised ASI:

If ASI fails to provide such disclosure by August the 4th, 2014, or if such disclosure is not reasonably specific, *Zilog may renew its motion for sanctions, and the Court will consider other remedies, up to and including dismissal of certain of ASI's claims.*

*Id.*, 50:9-14. (emphasis added).

ASI failed to comply with this Court's oral and written discovery orders and did not supplement its response to Zilog's Interrogatory No. 3 by August 4, 2014. Instead, on August 19, 2014 (15 days after this Court ordered ASI to respond), ASI chose to file a Motion for Voluntary Dismissal of Its Claims for Misappropriation of Trade Secrets, Improper Appropriation of Name, Consumer Protection Act, and Injunctive Relief, seeking dismissal of those claims without prejudice and without an award of fees or costs. ASI has yet to notice that motion for hearing. Given this Court's clear warning, ASI should not be surprised that Zilog renewed its Motion for Sanctions.

Second, Zilog respectfully submits that ASI's assertion that it would be prejudicial and burdensome for ASI to respond to Zilog's Renewed Motion for Sanctions at the same time as this Court hears dispositive motions<sup>1</sup>, must also fail. ASI has been on notice from this Court, since the July 18, 2014 hearing, that its failure to comply with this Court's discovery orders could result in Zilog filing a renewed motion *and* the Court imposing sanctions including dismissal. This is not the situation where ASI supplemented its response to Interrogatory No. 3 by August 4, 2014, and the parties are arguing whether or not ASI's supplemental response complied. In this case, ASI failed to respond at all.

Third, the parties are presently attempting to schedule a mediation in this matter during the month of October, 2014. Given the pendency of trial nearly three months away, Zilog would suffer prejudice should Zilog's Renewed Motion for Sanctions not be heard before this

---

<sup>1</sup> ASI asserts prejudice, but found the time to prepare a 39-page memorandum in opposition to Zilog's Motion for Summary Judgment, a 27-page memorandum in support of ASI's own motion for summary judgment, and a 36-page memorandum in opposition to the Sage defendants' motion for summary judgment.


time. Zilog respectfully submits that it should not be overlooked that ASI caused the Court to schedule this matter on a fast track and requested that trial be scheduled to commence on December 2, 2014.

Fourth and finally, Zilog's Renewed Motion for Sanctions and Zilog's Motion for Summary Judgment raise related issues in that Zilog seeks entry of judgment on ASI's Sixth Cause of Action (Idaho Trade Secret Violation) and portions of ASI's Eighth Cause of Action (Unjust Enrichment), Tenth Cause of Action (Declaratory Relief), and Eleventh Cause of Action (Injunctive Relief) in both motions, either as a summary judgment or as a sanction, and Zilog's Renewed Motion for Sanctions and Zilog's Motion for Summary Judgment should be heard at the same time, so that the Court may consider whether to enter summary judgment for Zilog on those claims or dismiss them as a sanction for ASI's failure to comply with the Court's orders.

WHEREFORE, Zilog respectfully requests the Court to enter its Order denying American Semiconductor, Inc.'s Motion to Continue the Hearing on Zilog's Renewed Motion for Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1).

DATED this 23rd day of September, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of September, 2014, I caused a true and correct copy of the foregoing **ZILOG, INC.'S OPPOSITION TO AMERICAN SEMICONDUCTOR, INC.'S MOTION TO CONTINUE THE HEARING ON ZILOG'S RENEWED MOTION FOR SANCTIONS PURSUANT TO IRCP 37 AND MOTION FOR SANCTIONS PURSUANT TO IRCP 11(a)(1)** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229

Pocatello, ID 83205-4229

Facsimile (208) 235-1182

*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☐ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☒ Facsimile

Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
12550 W. Explorer Dr., Suite 100  
Boise, ID 83713

Facsimile (208) 345-4461

*Attorneys for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☐ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☒ Facsimile

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
800 W. Main St., Suite 1300  
Boise, ID 83702

Facsimile (208) 562-4901

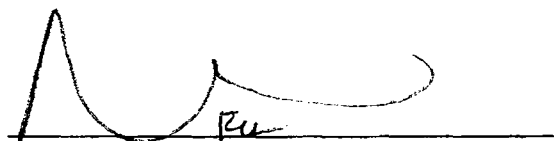
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☒ Facsimile

  
Gerald T. Husch

**ZILOG, INC.'S OPPOSITION TO AMERICAN SEMICONDUCTOR, INC.'S MOTION TO CONTINUE THE HEARING ON ZILOG'S RENEWED MOTION FOR SANCTIONS PURSUANT TO IRCP 37 AND MOTION FOR SANCTIONS PURSUANT TO IRCP 11(a)(1) - 5**

Client:3569492.2

001090

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. **415**

**SEP 24 2014**

**CHRISTOPHER D. RICH, Clerk**  
**By KYLE MEREDITH**  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
Sarah H. Arnett, ISB No. 6545  
PARSONS BEHLE & LATIMER  
800 W. Main Street, Suite 1300  
Boise, ID 83702  
Telephone: (208) 562-4900  
Facsimile: (208) 562-4901  
Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com  
SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**DECLARATION OF KENNEDY  
LUVAI IN SUPPORT OF AMERICAN  
SEMICONDUCTOR, INC.'S MOTION  
FOR CONTINUANCE OF ZILOG'S  
MOTION FOR SANCTIONS**

**ORIGINAL**

I, Kennedy K. Luvai, declare as follows:

1. I am duly licensed to practice law in Idaho and before this Court, and I am over eighteen years of age. I am an attorney with the law firm of Parsons Behle & Latimer, PLC, and one of the attorneys of record for plaintiff American Semiconductor, Inc. ("ASI") in the above-referenced action. I make this declaration based upon my own personal knowledge and, if called upon, could and would testify as to the truth of the statements contained herein.

2. I make this declaration in support of ASI's Motion for Continuance of Zilog's Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1) (the "Motion for Continuance").

3. On pages 3 and 4 of the opposition to the Motion for Continuance filed on September 23, 2013, defendant Zilog, Inc. ("Zilog") invokes the issue of "mediation" in this action as one of the alleged bases for its refusal to agree to a continuation of the hearing on the foregoing motion.

4. I submit this declaration and the attached exhibits in order to provide the Court with a complete picture regarding the status of mediation and, in particular, defendants' failures to observe the Court-mandated mediation deadline October 3, 2014.

5. Attached hereto as **Exhibit A** is a true and correct copy of an e-mail I sent to counsel on August 20, 2014 proposing a mediator. As indicated, I followed-up with an e-mail on August 25, 2014 having not received any acknowledgment or response to the August 20, 2014 e-mail.

6. Attached hereto as **Exhibits B** and **C** are true and correct copies of e-mails from counsel some eight days after my initial inquiry was made – finally stating that Judge Schilling was acceptable as a mediator.

7. Attached hereto as **Exhibit D** is a true and correct copy of an e-mail chain spanning the time period between August 28, 2014 and September 8, 2014 wherein counsel for ASI

repeatedly requested that counsel for defendants provide “a *single* proposed date that is available for defendants and their counsel” for a mediation before the court-imposed deadline. No such proposed date was provided then, and no such date has been provided as of this time.

8. In an effort to schedule a mediation consistent with the Court’s deadline, and hoping that a real-time conversation among counsel would increase the chances of the same, my office facilitated a telephone conference on September 11, 2014. At that time, counsel for defendants advised that their preferred mediation date was October 24, 2014 – some three weeks after the mediation deadline.

9. Attached hereto as **Exhibit E** is a true and correct copy of an e-mail that I sent to counsel for defendants on September 19, 2014 reporting on Judge Schilling’s unavailability on October 24, 2014, and conveying his availability on October 20, 2014.

10. Attached hereto as **Exhibit F** is a true and correct copy of a subsequent e-mail from Mr. Cooper’s office indicating that his availability on October 20, 2014 is contingent on certain obligations in an unrelated case. As of the filing of this motion, I have yet to receive an acknowledgment or response to my September 19, 2014 email from any of Zilog’s counsel.

11. To date, we have provided over a dozen proposed mediation dates to counsel for defendants. Nevertheless, for the reasons set forth above, no mediation has been scheduled. Defendants have yet to propose a single mediation date before the Court-imposed deadline, and have yet to propose a mediation date after the deadline that is also available for our mediator.

I declare under penalty of perjury under the laws of Idaho that the foregoing is true and correct. Executed this 24th day of September, 2014, at Boise, Idaho.



---

Kennedy K. Luvai

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 24th day of September, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Email: dbower@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Email: srt@moffatt.com gth@moffatt.com

  
Kennedy K. Luvai

## **EXHIBIT A**

## Kennedy K. Luvai

---

**From:** Kennedy K. Luvai  
**Sent:** Monday, August 25, 2014 5:39 PM  
**To:** gary@cooper-larsen.com; gth@moffatt.com  
**Cc:** barbie@cooper-larsen.com; Cheryl Dunham (CLD@moffatt.com); John N. Zarian; Sarah H. Arnett; Cathy Pontak; Vicky Mallon  
**Subject:** FW: ASI v. Sage - Mediation

Counsel –

With the looming October 3 deadline to mediate, any word on whether Judge Schilling is acceptable to your clients? Please advise.

Best Regards,

---

**From:** Kennedy K. Luvai  
**Sent:** Wednesday, August 20, 2014 3:00 PM  
**To:** gary@cooper-larsen.com; gth@moffatt.com  
**Cc:** barbie@cooper-larsen.com; Cheryl Dunham (CLD@moffatt.com); John N. Zarian; Sarah H. Arnett; Cathy Pontak; Vicky Mallon  
**Subject:** ASI v. Sage - Mediation

Gary, Gerry –

Would your clients be amenable to having Judge Ron Schilling mediate this case?

Please let us know at your earliest and we can then work on a mutually acceptable mediation date.

Best Regards,

Kennedy



**Kennedy K. Luvai | Attorney at Law | Registered Patent Attorney**

800 W. Main Street, Suite 1300 | Boise, Idaho 83702

Main 208.562.4900 | Direct 208.562.4892 | Cell 208.863.0508

parsonsbehie.com | vCard

---

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---

## **EXHIBIT B**



## Kennedy K. Luvai

---

**From:** Gary Cooper <gary@cooper-larsen.com>  
**Sent:** Thursday, August 28, 2014 1:43 PM  
**To:** John N. Zarian; Kennedy K. Luvai; Barbie Snell; Gerry Husch  
**Subject:** Mediatoin

My clients are agreeable to mediation with Judge Schilling.

We have outstanding issues such as

1. Date for Doug Hackler's depo
2. Removal of AEO on the exhibit yesterday which I inquired about earlier today
3. Dates for Hoffman and Holland depositions
4. a date for ASI 30(b)(6) depo
5. Removal of AEO on Hoffman's report

Please advise when you are available to discuss these issues with Gerry and I.

Gary

--

Gary L. Cooper  
COOPER & LARSEN

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DO NOT read, copy, save, or disseminate this communication unless you are the intended recipient. This E-Mail communication contains confidential and/or privileged information intended only for the named recipients. If you have received this communication in error, please call us (collect) immediately at (208) 235-1145 and ask to speak to the sender of the communication; or please send a reply e-mail to the sender and notify the sender immediately that you have received this communication in error.

This communication was not written and cannot be used for the purposes of avoiding federal tax penalties that may be imposed on you, unless specifically stated.

## **EXHIBIT C**

## Kennedy K. Luvai

---

**From:** Gerry Husch <GTH@moffatt.com>  
**Sent:** Thursday, August 28, 2014 2:33 PM  
**To:** Kennedy K. Luvai; John N. Zarian  
**Cc:** Gary Cooper; Barbie Snell  
**Subject:** ASI [MT-C.FID619553]

Kennedy,

My client will agree to mediation before Judge Schilling.

It is not clear to me whether you are asking me to review your proposed order on ASI's motion to dismiss or whether you have already submitted it to the Court. Can you please advise me which is the case?

Gerry

**GERALD T. HUSCH**  
Attorney

**MOFFATT  
THOMAS**  
*Attorneys at Law*

**Direct** 208 385 5406

**Main** 208 345 2000

**Fax** 208 385 5384

[GTH@moffatt.com](mailto:GTH@moffatt.com)

<http://www.moffatt.com>  
[m](#)

**Mailing Address:**

P.O. Box 829  
Boise, ID 83701-0829

**Physical Address:**

101 S. Capitol Blvd., 10th Floor  
Boise, ID 83702-7710

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## **EXHIBIT D**

## Kennedy K. Luvai

---

**From:** Gerry Husch <GTH@moffatt.com>  
**Sent:** Monday, September 08, 2014 7:22 PM  
**To:** John N. Zarian; Kennedy K. Luvai  
**Cc:** Gary Cooper; dbower@stm-law.com; Chad Bernards; Barbie Snell; Sarah H. Arnett; Cathy Pontak; Vicky Mallon  
**Subject:** RE: ASI [MT-C.FID619553]

Do you want me to look for available dates that fall after the deadline?

### GERALD T. HUSCH

Attorney

**MOFFATT  
THOMAS**  
*Attorneys at Law*

**Direct** 208 385 5406

**Main** 208 345 2000

**Fax** 208 385 5384

[GTH@moffatt.com](mailto:GTH@moffatt.com)

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**Mailing Address:**

P.O. Box 829  
Boise, ID 83701-0829

**Physical Address:**

101 S. Capitol Blvd., 10th Floor  
Boise, ID 83702-7710

---

**From:** John N. Zarian [mailto:JZarian@parsonsbehle.com]  
**Sent:** Monday, September 08, 2014 7:20 PM  
**To:** Gerry Husch; Kennedy K. Luvai  
**Cc:** Gary Cooper; dbower@stm-law.com; Chad Bernards; Barbie Snell; Sarah H. Arnett; Cathy Pontak; Vicky Mallon  
**Subject:** RE: ASI [MT-C.FID619553]

Thanks. To be clear, we are still waiting for a single proposed date that is available for defendants and their counsel.

---

**From:** Gerry Husch [mailto:GTH@moffatt.com]  
**Sent:** Monday, September 08, 2014 7:16 PM  
**To:** John N. Zarian; Kennedy K. Luvai  
**Cc:** Gary Cooper; dbower@stm-law.com; Chad Bernards; Barbie Snell; Sarah H. Arnett; Cathy Pontak; Vicky Mallon  
**Subject:** RE: ASI [MT-C.FID619553]

I will ask, but I suspect we will need to extend the mediation deadline.

### GERALD T. HUSCH

Attorney

**MOFFATT  
THOMAS**  
*Attorneys at Law*

**Direct** 208 385 5406

**Main** 208 345 2000

**Fax** 208 385 5384

[GTH@moffatt.com](mailto:GTH@moffatt.com)

<http://www.moffatt.com>

Mailing Address: Physical Address:  
P.O. Box 829 101 S. Capitol Blvd., 10th Floor  
Boise, ID 83701-0829 Boise, ID 83702-7710

**From:** John N. Zarian [mailto:JZarian@parsonsbehle.com]  
**Sent:** Monday, September 08, 2014 7:11 PM  
**To:** Gerry Husch; Kennedy K. Luvai  
**Cc:** Gary Cooper; dbower@stm-law.com; Chad Bernards; Barbie Snell; Sarah H. Arnett; Cathy Pontak; Vicky Mallon  
**Subject:** RE: ASI [MT-C.FID619553]

Thanks. It sounds like the day of the hearing was not an option in any event.

Please provide us with mediation dates, before the deadline, which are available for you and your clients.



A Professional  
Law Corporation

**John N. Zarian | Attorney at Law**

800 W. Main Street, Suite 1300 | Boise, Idaho 83702

Main 208.562.4900 | Direct 208.562.4902 | Fax 208.562.4901

[parsonsbehle.com](http://parsonsbehle.com) | vCard

**From:** Gerry Husch [mailto:GTH@moffatt.com]  
**Sent:** Monday, September 08, 2014 6:45 PM  
**To:** Kennedy K. Luvai  
**Cc:** Gary Cooper; dbower@stm-law.com; Chad Bernards; Barbie Snell; John N. Zarian; Sarah H. Arnett; Cathy Pontak; Vicky Mallon  
**Subject:** RE: ASI [MT-C.FID619553]

My client is unavailable from September 21 through October 7.

**GERALD T. HUSCH**

Attorney

**MOFFATT  
THOMAS**  
Attorneys at Law

**Direct** 208 385 5406

**Main** 208 345 2000

**Fax** 208 385 5384

[GTH@moffatt.com](mailto:GTH@moffatt.com)

<http://www.moffatt.com>  
[m](#)

Mailing Address: Physical Address:  
P.O. Box 829 101 S. Capitol Blvd., 10th Floor  
Boise, ID 83701-0829 Boise, ID 83702-7710

**From:** Kennedy K. Luvai [mailto:KLuvai@parsonsbehle.com]  
**Sent:** Monday, September 08, 2014 6:42 PM  
**To:** Gerry Husch  
**Cc:** Gary Cooper; dbower@stm-law.com; Chad Bernards; Barbie Snell; John N. Zarian; Sarah H. Arnett; Cathy Pontak; Vicky Mallon  
**Subject:** Re: ASI [MT-C.FID619553]

Thanks.

What dates prior to Oct 3 will work for your client?

Sent from my iPhone

On Sep 8, 2014, at 6:39 PM, "Gerry Husch" <[GTH@moffatt.com](mailto:GTH@moffatt.com)> wrote:

No, September 29 will not work for my client.

**GERALD T. HUSCH**  
Attorney

<image001.png>

**Direct** 208 385 5406

**Main** 208 345 2000

**Fax** 208 385 5384

[GTH@moffatt.com](mailto:GTH@moffatt.com)

<http://www.moffatt.com>

m

**Mailing Address:**

P.O. Box 829

Boise, ID 83701-0829

**Physical Address:**

101 S. Capitol Blvd., 10th Floor

Boise, ID 83702-7710

---

**From:** Kennedy K. Luvai [<mailto:KLuvai@parsonsbehle.com>]

**Sent:** Monday, September 08, 2014 6:33 PM

**To:** Gerry Husch

**Cc:** Gary Cooper; [dbower@stm-law.com](mailto:dbower@stm-law.com); Chad Bernards; Barbie Snell; John N. Zarian; Sarah H. Arnett; Cathy Pontak; Vicky Mallon

**Subject:** Re: ASI [MT-C.FID619553]

Thanks Gerry.

Does September 29 work for your client?

Sent from my iPhone

On Sep 6, 2014, at 12:36 PM, "Gerry Husch" <[GTH@moffatt.com](mailto:GTH@moffatt.com)> wrote:

That won't work for my client.

Sent from my iPhone

On Sep 6, 2014, at 8:41 AM, "Gary Cooper" <[gary@cooper-larsen.com](mailto:gary@cooper-larsen.com)> wrote:

Why don't we do it after the hearing on September 26. I doubt we need a full day for mediation anyway.

Gary

On Fri, Sep 5, 2014 at 6:09 PM,  
Kennedy K. Luvai  
<[KLuvai@parsonsbehle.com](mailto:KLuvai@parsonsbehle.com)>  
wrote:  
Gary,

Feel free to propose an alternative,  
for our consideration, consistent with  
the Oct 3 mediation deadline.

Sent from my iPhone

On Sep 5, 2014, at 10:02 AM,  
"Kennedy K. Luvai"  
<[KLuvai@parsonsbehle.com](mailto:KLuvai@parsonsbehle.com)>  
wrote:

So, what do you  
suggest?

**From:** Gary Cooper  
[<mailto:gary@cooper-larsen.com>]  
**Sent:** Friday,  
September 05, 2014  
10:01 AM  
**To:** Kennedy K. Luvai  
**Cc:** Gerry Husch;  
[dbower@stm-law.com](mailto:dbower@stm-law.com);  
Chad Bernards; Barbie  
Snell; John N. Zarian;  
Sarah H. Arnett; Cathy  
Pontak; Vicky Mallon  
**Subject:** Re: ASI [MT-  
C.FID619553]

I cannot do it that date  
or anytime that week

Gary

On Fri, Sep 5, 2014 at  
9:12 AM, Kennedy K.  
Luvai



<KLuvai@parsonsbe  
hle.com> wrote:

Gentlemen –

Judge Schilling is  
available to mediate  
this case on **September  
29** in Boise.

To avoid losing that  
date, please let us know  
by close of business on  
Monday, if at all  
possible, whether that  
date will work for you  
and your clients.

Best Regards,

Kennedy



A Professional  
Law Corporation

**Kennedy K. Luvai | Attorney at Law | Regist**  
800 W. Main Street, Suite 1300 | Boise, Idaho 83702  
Main 208.562.4900 | Direct 208.562.4892 | Cell 208.  
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---

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you have received the message in error, please immediately notify us by reply electronic mail or by telephone at 801.532.1234, and delete this original message.

---

---

**From:** Gerry Husch  
[mailto:[GTH@moffatt.com](mailto:GTH@moffatt.com)]  
**Sent:** Thursday, August 28, 2014 2:33 PM  
**To:** Kennedy K. Luvai;  
John N. Zarian  
**Cc:** Gary Cooper;  
Barbie Snell  
**Subject:** ASI [MT-C.FID619553]

Kennedy,

My client will agree to mediation before Judge Schilling.

It is not clear to me whether you are asking me to review your proposed order on ASI's motion to dismiss or whether you have already submitted it to the Court. Can you please advise me which is the case?

Gerry

**GERALD T. HUSCH**

**Attorney**

<image001.png>

**Direct** 208 385 5406

**Main** 208 345 2000

**Fax** 208 385 5384

[GTH@moffatt.com](mailto:GTH@moffatt.com)

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**Mailing Address:**                      **Physic**

P.O. Box 829                              101 S

Boise, ID 83701-0829                      Boise

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--

Gary L. Cooper

**COOPER &  
LARSEN**

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Gary L. Cooper  
COOPER & LARSEN

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## **EXHIBIT E**

## Kennedy K. Luvai

---

**From:** Kennedy K. Luvai  
**Sent:** Friday, September 19, 2014 10:45 AM  
**To:** gth@moffatt.com; gary@cooper-larsen.com  
**Cc:** barbie@cooper-larsen.com; John N. Zarian; Cathy Pontak; Vicky Mallon  
**Subject:** ASI v. Sage - Scheduling Issues

Gerry & Gary,

Following up on the phone call from last week.

Holland - available Oct 6-8.

Hoffman - unavailable the week of October 6, but is available on Oct 13.

ASI 30(b)(6) & D. Hackler – available on Oct 15.

Judge Schilling – unavailable on Oct 24, but may be available Oct 20.

We are still waiting to hear back from you on availabilities for Reinstein, Dalrymple, Janzen and Donohoe. Please let us know as soon as possible.

Best Regards,

Kennedy



**Kennedy K. Luvai | Attorney at Law | Registered Patent Attorney**

800 W. Main Street, Suite 1300 | Boise, Idaho 83702

Main 208.562.4900 | Direct 208.562.4892 | Cell 208.863.0508

[parsonsbehle.com](http://parsonsbehle.com) | vCard

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## **EXHIBIT F**



## Kennedy K. Luvai

---

**From:** Barbie Snell <barbie@cooper-larsen.com>  
**Sent:** Wednesday, September 24, 2014 8:08 AM  
**To:** Kennedy K. Luvai; John N. Zarian; Gerry Husch  
**Cc:** Gary Cooper; Cathy Pontak; cld@moffatt.com; Chad Bernards; dbower@stm-law.com  
**Subject:** ASI v Sage, et al

Kennedy:

I do have confirmation our clients are available for mediation on October 20, 2014, however, this date is contingent upon Gary's trial in Federal Court settling.

Thank you,

Barbie Snell, Paralegal  
Cooper & Larsen  
P. O. Box 4229  
Pocatello, ID 83205-4229  
208-235-1145 phone  
208-235-1182 fax

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Neville  
Sent  
9-24-14  
DJ

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
P.M. 415  
SEP 24 2014  
CHRISTOPHER D. RICH, Clerk  
By KYLE MEREDITH  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
Sarah H. Arnett, ISB No. 6545  
PARSONS BEHLE & LATIMER  
800 W. Main Street, Suite 1300  
Boise, ID 83702  
Telephone: (208) 562-4900  
Facsimile: (208) 562-4901  
Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com  
SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S REPLY IN SUPPORT OF ITS  
MOTION TO CONTINUE THE  
HEARING ON ZILOG'S RENEWED  
MOTION FOR SANCTIONS  
PURSUANT TO IRCP 37 AND  
MOTION FOR SANCTIONS  
PURSUANT TO IRCP 11(a)(1)**

ORIGINAL

DJ

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its counsel of record, respectfully submits the following reply memorandum in further support of its Motion to Continue the Hearing on Zilog's Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11 (filed September 19, 2014).

As further discussed below, Zilog, Inc.'s ("Zilog") opposition (filed September 23, 2014) provides a misleading picture of the circumstances surrounding the timing and content of its pending motions for sanctions. Furthermore, the parties and the Court are presently burdened with a huge amount of briefing in connection with the pending motions for summary judgment already set for a hearing before the Court on September 26, 2014.

Under the circumstances, it would be equitable and in the interests of justice to continue the hearing and associated briefing on Zilog's motion for sanctions. To that end, ASI respectfully submits this brief reply memorandum.

### **ARGUMENT**

#### **A. Zilog Raises a Plethora of New Issues, For the First Time, in its Motions.**

Eager to refute ASI's assertion that it was, yet again, blindsided on a close of business on Friday, Zilog contends that it is merely "renewing" a previously filed motion. This is not so.

*First*, Zilog's instant motion under I.R.C.P. 37 invokes and relies on at least two declarations containing *new* and sweeping assertions concerning the nature of Zilog's technical production. These declarations – from Mr. David Staab and from Zilog's technical expert – were provided to ASI concurrent with the filing of Zilog's motions at the close of business on September 12, 2014. The noted incompleteness of that technical production was a factor that handicapped the review by ASI's technical expert, Stephen Holland, and, ultimately, informed ASI's considered decision to voluntarily move to dismiss its trade secret claim without prejudice.

*Second*, setting aside the new issues raised as part of Zilog's motion under I.R.C.P. 37, Zilog attempts to shoehorn a further I.R.C.P. 11 motion into the Court's already crowded schedule for September 26, 2014. Obviously, Zilog has not previously filed an I.R.C.P. 11 motion. Thus, Zilog cannot credibly contend that its silence and failure to notify ASI of its intent somehow put ASI "on notice."

Clearly, Zilog has raised a host of new issues, including requests for extraordinary relief, necessitating ASI's motion to continue the hearing so as to have ample time to fully and appropriately respond to Zilog's motion.<sup>1</sup>

**B. ASI Will Address the Merits of Zilog's Allegations in its Opposition on the Merits**

Rather than address the discrete issues set forth in ASI's concise motion for continuance, Zilog rehashes the questionable assertions laid out in its moving papers. Of course, ASI's motion for continuance is not the proper vehicle for such a discussion.

Accordingly, ASI will spare the Court a point-by-point rebuttal of Zilog's claims at this juncture, as such an exercise will clearly not aid the Court in its decision as to whether and when to re-set the hearing. However, ASI will emphasize, for the avoidance of doubt, that it will address all of the arguments made as part of Zilog's motions for sanctions once the Court re-sets the hearing and/or a briefing schedule.

Given that all counsel will be present at the hearing on September 26, 2014 before the Court, ASI submits that a mutually acceptable date and time could be agreed upon without much

---

<sup>1</sup> Interestingly, Zilog complains that ASI cannot claim prejudice because it "found the time" to prepare opposition memoranda to motions for summary judgment filed by Zilog. This stray assertion hurts more than helps Zilog's position. Had defendants not filed their unwarranted dispositive motions or not taken liberties with the record and case law, as they did, then ASI would likely have "found the time" to deal with these *new* motions for sanctions in time for the September 26, 2014 hearing.

difficulty. Furthermore, any of Zilog's legitimate concerns as to "prejudice" could be addressed and accounted for in the agreed upon setting.

**C. Zilog's Invocation of Mediation as a Basis for its Opposition is Disingenuous.**

Seeking to manufacture a crisis, Zilog suggests that it is imperative that its motions for sanctions be heard prior to mediation. This is a curious and somewhat remarkable position given defendants' collective *disregard* of the Court's October 3, 2014 mediation deadline. By contrast, ASI has been and remains willing, ready and able to meet the Court-mandated deadline.

As documented in the accompanying declaration and exhibits attached thereto, neither Zilog nor the other defendants have *ever* proposed a single mediation date prior to October 3, 2014. Luvai Decl., ¶ 7. Indeed, Zilog has yet to acknowledge or provide a response of any kind to the most recent mediation proposal (for October 20, 2014) floated some five days ago. Luvai Decl., ¶ 11. While the Sage defendants have responded, they have made it clear that the possible date of *October 20, 2014* is subject to their lead attorney's availability. Luvai Decl., ¶ 11; Ex. F.

Clearly, having disregarded the Court-ordered mediation deadline, Zilog cannot point to "mediation" to justify its refusal to extend common courtesies in the form of a reasonable extension of time.

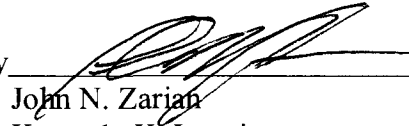
**CONCLUSION**

For the foregoing reasons, and as further articulated in ASI's moving papers, ASI submits that the Court should take up the ASI's motion to continue Zilog's motions for sanctions at the hearing on September 26, 2014 and order that the hearing be re-set to a mutually convenient date and time.

DATED this 24th day of September, 2014.

PARSONS BEHLE & LATIMER

By



John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of September, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

<p>Gary L. Cooper COOPER &amp; LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com</p>
<p>Daniel W. Bower STEWART TAYLOR &amp; MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: dbower@stm-law.com suzie@stm-law.com</p>
<p>Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK &amp; FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com</p>

  
\_\_\_\_\_  
John N. Zarian

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 144

SEP 25 2014

CHRISTOPHER D. RICH, Clerk  
By JAMIE MARTIN  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
Sarah Arnett, ISB No. 6545  
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KLuvai@parsonsbehle.com  
SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**FOURTH AFFIDAVIT OF SARAH  
H. ARNETT PROVIDING  
SUPPLEMENTAL AUTHORITY  
IN FURTHER SUPPORT OF  
OPPOSITION TO ZILOG'S MOTION  
FOR SUMMARY JUDGMENT**

**ORIGINAL**

TR



STATE OF IDAHO                    )  
  ) ss.  
County of ADA                    )

I, Sarah H. Arnett, being first duly sworn upon oath, depose and say:

1. I am duly licensed to practice law in Idaho and before this Court, and I am over eighteen years of age. I am an attorney with the law firm of Parsons Behle & Latimer, PLC, and one of the attorneys of record for plaintiff American Semiconductor, Inc. ("ASI") in the above-referenced action. I make this declaration based upon my own personal knowledge.

2. I make this declaration in further support of ASI's opposition to Defendant Zilog, Inc.'s ("Zilog") motion for summary judgment.


3. As Zilog is now erroneously asserting that Idaho Code § 48-806 of the Idaho Trade Secrets Act preempts any civil tort claim, even though not based upon misappropriation of trade secrets, simply because the claim has been asserted in addition to other claims which do allege misappropriation of trade secrets, ASI hereby submits the following supplemental persuasive authority demonstrating Zilog is incorrect in its assertion as to the breadth of the displacement provision of the Idaho Trade Secrets Act. Attached hereto as **Exhibit A** and incorporated herein by reference is a true and correct copy of the Seventh Circuit Court of Appeals decision in *Hecny Transportation, Inc. v. Chu*, 430 F.3d 402 (7<sup>th</sup> Cir. 2005) (interpreting the displacement provision of the Illinois Trade Secrets Act, which is substantially the same as under the Idaho Trade Secrets Act, and holding Illinois's Act did not preempt plaintiff employer's claims against former employee for diversion of corporate assets, employees' time, customer lists, and corporate opportunities involving alleged theft, fraud, and fiduciary defalcations not based upon existence and misappropriation of trade secrets) (citing the Uniform Law Commissioners' comment to the model Uniform Trade Secrets Act of 1985 from which

Illinois's and Idaho's Acts were adopted). Attached hereto as **Exhibit B** and incorporated herein by reference is a true and correct copy of the ruling issued by the U.S. District Court for the Western District of Michigan in *Bliss Clearing Niagara, Inc. v. Midwest Brake Bond Co.*, 270 F. Supp. 2d 943 (W.D. Mich. 2003) (interpreting the displacement provision of the Michigan Uniform Trade Secrets Act, which is substantially the same as under the Idaho Trade Secrets Act, and ruling Michigan's Act did not preempt plaintiff manufacturer's tortious interference and unfair competition claims against competitor to the extent those claims were based upon wrongful conduct independent of alleged trade secret misappropriation by defendant).

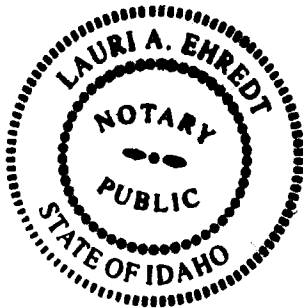
4. With respect to Zilog's erroneous contention that Idaho applies an actual knowledge only standard for the knowledge element of a tortious interference with contract claim, ASI hereby submits the following supplemental persuasive Washington authority from which Idaho has adopted tortious interference law. See **Exhibit C**, attached hereto, and incorporated herein by reference, the Supreme Court of Washington's decision cited by the Idaho Supreme Court in *Barlow v. Int'l Harvester Co.*, 95 Idaho 881, 893, 522 P.2d 1102, 1114 (1974) in setting forth the elements for a tortious interference with contract claim, *Calbom v. Knudtson*, 65 Wash. 2d 157, 165, 396 P.2d 148, 153 (1964) (in attorney's action for tortious interference inducing breach of his established attorney-client relationship, explaining with respect to claims for tortious interference with contract or business relation "[a]lthough knowledge of the existence of the business relationship in issue is an essential element in establishing liability for interference therewith, it is sufficient if the evidence reveals that the alleged interferor had knowledge of facts giving rise to the existence of the relationship [and] [i]t is not necessary that the interferor understand the legal significance of such facts."); see also **Exhibit D**, attached hereto and incorporated herein by reference, *Topline Equipment, Inc. v. Stan Witty Land, Inc.*, 31

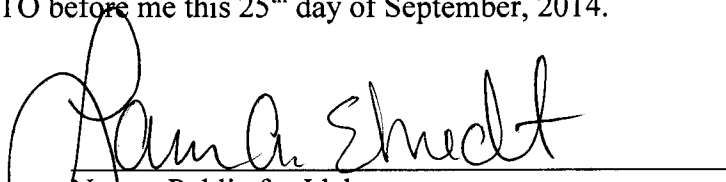
Wash. App. 86, 92-93, 639 P.2d 825, 830 (Wash. App.1982) (explaining with respect to establishing the knowledge element for tortious interference with a contractual relationship or business expectancy, “[i]t is not necessary that the interferor understand the precise legal nature of the relationship with which he is interfering”) (citing *Calbom v. Knudtson*, 65 Wash. 2d 157, 165, 396 P.2d 148, 153 (1964))

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
Sarah H. Arnett

SUBSCRIBED AND SWORN TO before me this 25<sup>th</sup> day of September, 2014.

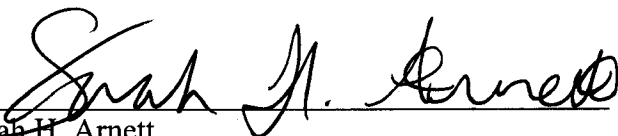


  
Notary Public for Idaho  
Residing at Boise, Idaho  
Commission expires: 08/18/2016

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25<sup>th</sup> day of September, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: dbower@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com

  
\_\_\_\_\_  
Sarah H. Arnett

**EXHIBIT A**

430 F.3d 402  
United States Court of Appeals,  
Seventh Circuit.

HECNY TRANSPORTATION, INC.,  
Plaintiff-Appellant, Cross-Appellee,

v.

George CHU, Defendant-Appellee,  
Cross-Appellant,  
and

Daisy Chu, Platinum International Logistics, Inc.,  
and Wilfredo Jamilosa, Defendants-Appellees.

No. 05-1273, 05-1399. | Argued Sept. 20, 2005. |  
Decided Oct. 31, 2005.

### Synopsis

**Background:** Corporate operator of shipping network brought action against its former manager for diversion of corporate opportunities and assets, and manager counterclaimed. The United States District Court for the Northern District of Illinois, Samuel Der-Yeghiayan, J., granted judgment for manager on the main claim, and for corporation on counterclaim.

**Holdings:** The Court of Appeals, Easterbrook, Circuit Judge, held that:

[1] customer lists were not trade secrets within preemptive purview of Illinois Trade Secrets Act (ITSA);

[2] corporation's claims of diversion of corporate opportunities and assets were unaffected by preemptive effect of ITSA; and

[3] parent of subsidiary for which manager was employed was not answerable, but subsidiary's own liability was for resolution at trial.

Affirmed in part and vacated and remanded in part.

West Headnotes (4)

- [1] **Antitrust and Trade Regulation**  
☞ Customer lists and information

Information regarding customers of operator of worldwide shipping network was not a "trade secret," for purposes of Illinois Trade Secrets Act's (ITSA) preemption of non-contract claims for misappropriation of trade secrets, since customers' identities were not confidential and were indeed widely known in the trade, and operator took no steps to maintain confidentiality. S.H.A. 765 ILCS 1065/2(d)(2), 1065/8(a).

43 Cases that cite this headnote

[2]

### Courts

☞ Decisions of United States Courts as Authority in State Courts

Decisions of federal district courts on issues of state law have neither authoritative nor precedential force.

1 Cases that cite this headnote

[3]

### Antitrust and Trade Regulation

☞ Constitutional and statutory provisions

Claims that shipping company's manager diverted corporate opportunities and assets, through fiduciary defalcations and outright theft, had nothing to do with any claim of trade secrets and were not within preemptive reach of the Illinois Trade Secrets Act (ITSA). S.H.A. 765 ILCS 1065/8.

38 Cases that cite this headnote

[4]

### Corporations and Business Organizations

☞ Parent and subsidiary corporations

Parent corporation, a Hong Kong corporation, was not answerable for any wrongs that its

domestic subsidiary may itself have inflicted upon subsidiary's manager, who sought return of his investment in the business together with contractual entitlements to profits and bonuses.

Cases that cite this headnote

#### Attorneys and Law Firms

\*403 Irving B. Levinson (argued), Bell, Boyd & Lloyd, Chicago, IL, for Plaintiff-Appellant.

R. Douglas Rees (argued), Jenner & Block, Chicago, IL, for Defendant-Appellee.

Before EASTERBROOK, MANION, and SYKES, Circuit Judges.

#### Opinion

EASTERBROOK, Circuit Judge.

Hecny Transportation, based in Hong Kong, operates a worldwide shipping network. Between 1989 and 1998 George Chu was the manager of Hecny's operations in Chicago. Hecny conducted an audit after he left and concluded that he had used Hecny's assets and personnel to operate his own ventures out of the Chicago station. This suit under the diversity jurisdiction charges George Chu with a breach of his fiduciary obligations and several related torts, plus breach of contract. To simplify the exposition we ignore the additional defendants.

Hecny's complaint charges Chu with diverting its assets (its physical plant, its employees' time, and its information such as customer lists) to competing businesses, which Chu allowed to operate from Hecny's \*404 premises. These activities may be classified as the diversion of corporate opportunities, as fiduciary defalcations, and as outright theft. (Hecny adds that when Chu left he took files, computers, software, and other office equipment with him, adding theft of physical assets to theft of business.) Chu denied these allegations and filed a counterclaim, seeking a return of his investment in the business plus bonuses and profit overrides that he contends were due him by contract; he accuses Hecny of jiggering the accounting numbers to avoid paying him what he had coming. The district court granted judgment for Chu on Hecny's claims. Although the judge called this summary judgment, he did not mention any evidence of

record. Instead he deemed Hecny's complaint self-defeating. 2004 WL 725466 (N.D.Ill. Mar. 30, 2004), 2004 U.S. Dist. LEXIS 5417. The court granted judgment in Hecny's favor on Chu's counterclaims, again without considering any evidence.

<sup>11</sup> Section 8(a) of the Illinois Trade Secrets Act, 765 ILCS 1065/8(a), is the basis on which the district judge resolved most of the case. This statute abolishes claims other than those based on contract arising from misappropriated trade secrets, replacing them with claims under the Act itself. Hecny accused Chu of misusing customer information, which Hecny calls a trade secret. The district judge thought that this knocked out all of Hecny's other claims. As for Hecny's trade-secret claims (based on both contracts with Chu and the statute): the judge ruled that the identity of Hecny's customers is not a trade secret in the first place, so Chu prevailed on this theory too. This part of the disposition, at least, is correct. Hecny does not contend that its customers' identities were confidential information; they were (it concedes) widely known in the trade, and it did not take any steps (such as encryption or restricted-access rooms) to maintain their confidentiality. 765 ILCS 1065/2(d)(2). But the absence of trade secrets does not doom Hecny's other contentions.

Section 8(a) says that "this Act is intended to displace conflicting tort, restitutionary, unfair competition, and other laws of this State providing civil remedies for misappropriation of a trade secret." Misappropriation of a trade secret differs from other kinds of fiduciary defalcations, which the statute therefore does not affect. If Hecny had put its customer list on its web site for the world to ogle, that would not have permitted its managers to go into covert competition using Hecny's own depot and staff, or to walk off with computers and fax machines, as Hecny alleges Chu did. Trade secrets just have nothing to do with Hecny's principal claims.

<sup>12</sup> Illinois courts have had very little to say about the effect of § 8(a), perhaps because it is unimaginable that someone who steals property, business opportunities, and the labor of the firm's staff would get a free pass just because none of what he filched is a trade secret. Both sides have cited decisions by federal district judges interpreting Illinois law, but no pertinent decisions by the state judiciary. Decisions of federal district courts on issues of state law have neither authoritative nor precedential force, see, e.g., *Old Republic Ins. Co. v. Chuhak & Tecson, P.C.*, 84 F.3d 998, 1003-04 (7th Cir.1996); *Anderson v. Romero*, 72 F.3d 518, 525 (7th Cir.1995), so we need not analyze them.

<sup>13</sup> Because the Illinois Trade Secrets Act is based on the

Uniform Trade Secrets Act of 1985, we can check our intuition about its preemptive force by asking how other states have understood its scope. The dominant view is that claims are foreclosed only when they rest on the conduct \*405 that is said to misappropriate trade secrets. *R.K. Enterprise, L.L.C. v. Pro-Comp Management, Inc.*, 356 Ark. 565, 158 S.W.3d 685 (2004); *Savor, Inc. v. FMR Corp.*, 812 A.2d 894 (Del.2002); *Weins v. Sporleder*, 605 N.W.2d 488 (S.D.2000). The Uniform Law Commissioners' comment to the model act supports this approach, stating: "The [provision] does not apply to duties imposed by law that are not dependent upon the existence of competitively significant secret information, like an agent's duty of loyalty to his or her principal." We would be shocked if the Supreme Court of Illinois were to disagree; nothing in its jurisprudence suggests that it would. This is not a close question. An assertion of trade secret in a customer list does not wipe out claims of theft, fraud, and breach of the duty of loyalty that would be sound even if the customer list were a public record.

Hecny wants not only damages but also an injunction enforcing Chu's covenant not to compete. The district court denied this request on the ground that the lack of trade secrets or "protectable interests" such as long-term customers vitiates the covenant. Illinois law recognizes an exception to this principle for covenants given by entrepreneurs as part of a joint venture. See *Hess Newmark Owens Wolf, Inc. v. Owens*, 415 F.3d 630 (7th Cir.2005) (discussing Illinois law). Hecny says that Chu was a joint venturer because he invested in the Chicago depot and received a portion of its profits; he responds that his investment was so small (about \$10,000) that he should be treated as an employee rather than an entrepreneur. The dispute need not be resolved, because Chu's covenant expired long ago: The district court allowed this suit to linger on its docket for seven years before decision, even though a request for an injunction to enforce a restrictive covenant should be adjudicated with dispatch. (Judge Der-Yeghiayan, who was assigned to this litigation following his appointment in 2003, does not bear responsibility for the court's failure to act before the covenant expired.) Today only damages are available, and as it seems unlikely that they could be established given the lack of trade secrets the litigation may be simplified by confining attention on remand to the events while Chu was the Chicago station's manager and any injury they may have caused.

<sup>141</sup> We have so far treated Hecny's allegations as the truth, as is essential when a case is resolved on the pleadings. This is also the required standard for evaluating a counterclaim dismissed on the pleadings, so now we must turn the tables and assume (as Chu alleges) that

everything Hecny says about him is a lie, and that he has been cheated out of his investment and profits. The district judge dismissed Chu's effort to state a claim against Hecny Transportation Ltd. (a Hong Kong corporation and parent of the U.S. subsidiary that is the plaintiff in this suit) on the ground that the parent is not a party to the joint venture agreement between Chu and the subsidiary. That's a sensible disposition; Illinois does not hold parent corporations answerable for the legal wrongs of their subsidiaries, unless (as Chu does not allege) the subsidiary deceived its trading partner into thinking that it was dealing with the parent directly or committed an equivalent fraud about relations within the corporate family. See, e.g., *Hystro Products, Inc. v. MNP Corp.*, 18 F.3d 1384 (7th Cir.1994) (Illinois law); *Sea-Land Services, Inc. v. Pepper Source*, 941 F.2d 519 (1991); *Pederson v. Paragon Pool Enterprises*, 214 Ill.App.3d 815, 822, 158 Ill.Dec. 371, 574 N.E.2d 165 (1st Dist.1991).

Illinois does not treat instructions given to a subsidiary corporation as actionable against a parent that did not itself commit \*406 a wrong directly against the complaining party. See *Forsythe v. Clark USA, Inc.*(2005), 836 N.E.2d 850, 297 Ill.Dec. 119, 2005 WL 2397724, 2005 Ill. LEXIS 960 ; cf. *Esmark, Inc. v. NLRB*, 887 F.2d 739, 756 (7th Cir.1989). As this subsidiary is solvent, it is unnecessary to decide whether Illinois might ever treat a parent as responsible for aiding and abetting a subsidiary's acts. But what of Chu's claims against Hecny Transportation, Inc., the U.S. subsidiary? The district judge did not mention them, and it is impossible to see how the decision dismissing them can be sustained. Hecny U.S. is no more entitled to steal from Chu than Chu is to steal from his ex-employer. Who cheated whom is something that must be resolved at trial rather than on the complaints.

The judgment is affirmed to the extent that it dismisses the counterclaim against Hecny Hong Kong and all of Hecny U.S.'s claims based on misappropriation of trade secrets. The decision not to issue an injunction enforcing the covenant not to compete also is affirmed. The judgment otherwise is vacated, and the case is remanded for decision on the merits. Circuit Rule 36 will apply on remand.

#### Parallel Citations

151 Lab.Cas. P 60,103, 77 U.S.P.Q.2d 1156



**Hecny Transp., Inc. v. Chu, 430 F.3d 402 (2005)**

151 Lab.Cas. P 60,103, 77 U.S.P.Q.2d 1156

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**EXHIBIT B**

270 F.Supp.2d 943  
United States District Court,  
W.D. Michigan,  
Southern Division.

BLISS CLEARING NIAGARA, INC., Plaintiff,  
v.  
MIDWEST BRAKE BOND CO., Defendant.

No. 5:02-CV-67. | May 14, 2003.

Industrial clutch manufacturer sued competitor for, inter alia, tortious interference, unfair competition, conversion, and misappropriation. On competitor's motion for judgment on pleadings, the District Court, Quist, J., held that: (1) tortious interference and unfair competition claims were not preempted by Michigan Uniform Trade Secrets Act (MUTSA) to extent that they were based on wrongful conduct independent of defendant's alleged trade secret misappropriation; (2) conversion and common law trade secret misappropriation claims were preempted; (3) discovery rule did not apply.

Motion granted in part and denied in part.

West Headnotes (7)

<sup>[1]</sup> **Antitrust and Trade Regulation**  
☞ Elements of misappropriation

Disputed status of information as trade secret does not preclude court from determining whether alternative common law claims are displaced by Michigan Uniform Trade Secrets Act (MUTSA); if information does not rise to level of trade secret, its misappropriation is not legally wrong. M.C.L.A. § 445.1901 et seq.

17 Cases that cite this headnote

<sup>[2]</sup> **Torts**  
☞ Contracts

Elements of tortious interference with contract in Michigan are: (1) existence of contract; (2)

breach; and (3) unjustified instigation of breach by defendant.

Cases that cite this headnote

<sup>[3]</sup> **Torts**  
☞ Business relations or economic advantage, in general  
**Torts**  
☞ Prospective advantage, contract or relations; expectancy

Elements of tortious interference with business relationship in Michigan are: (1) existence of valid business relationship or expectancy; (2) knowledge of relationship or expectancy by defendant; (3) intentional interference by defendant which induces or causes breach or termination of relationship or expectancy; and (4) damage to plaintiff.

Cases that cite this headnote

<sup>[4]</sup> **Antitrust and Trade Regulation**  
☞ Actions  
**Torts**  
☞ Nature and form of remedy

Trade secret misappropriation plaintiff's tortious interference and unfair competition claims against defendant were not preempted by Michigan Uniform Trade Secrets Act (MUTSA) to extent that they were based on wrongful conduct independent of defendant's alleged trade secret misappropriation. M.C.L.A. § 445.1901 et seq.

25 Cases that cite this headnote

<sup>[5]</sup> **Antitrust and Trade Regulation**  
☞ Actions

Trade secret misappropriation plaintiff's

conversion claim against defendant was preempted by Michigan Uniform Trade Secrets Act (MUTSA); allegations centered exclusively on defendant's allegedly unauthorized use of plaintiff's trade secrets. M.C.L.A. § 445.1901 et seq.

17 Cases that cite this headnote

161

**Antitrust and Trade Regulation**

☞ Constitutional and statutory provisions

**Antitrust and Trade Regulation**

☞ Actions

Plaintiff's common law trade secret misappropriation claim was preempted to extent it relied upon allegations of misappropriation occurring after effective date of Michigan Uniform Trade Secrets Act (MUTSA). M.C.L.A. § 445.1901 et seq.

10 Cases that cite this headnote

171

**Limitation of Actions**

☞ Nature of harm or damage, in general

**Limitation of Actions**

☞ Injuries to property

Under Michigan law, as predicted by federal district court, discovery rule does not apply to conversion, unfair competition, tortious interference, or common law trade secret misappropriation claims. M.C.L.A. § 600.5805(9).

5 Cases that cite this headnote

**Attorneys and Law Firms**

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**OPINION**

QUIST, District Judge.

Plaintiff, Bliss Clearing Niagara, Inc. ("Bliss"), has sued Defendant, Midwest Brake Bond Co. ("Midwest"), alleging claims for trademark infringement, unfair competition, and dilution under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a) and (c), a claim for misappropriation under the Michigan Uniform Trade Secrets Act ("MUTSA"), M.C.L. § 445.1901–.1910, and various tort claims. Bliss alleges that, among other things, Midwest obtained and used Bliss' trade secrets, and confidential and proprietary information, to manufacture, distribute, and sell a machine identical to Bliss' "Torc-Pac 40" clutch. Now before the Court is Midwest's motion pursuant to Federal Rule of Civil Procedure 12(c) for judgment on Counts VI, VII and VIII of Bliss' complaint, which allege, respectively, claims for tortious interference with contractual relations and advantageous business opportunity, unfair competition in violation of the common law, and conversion. Midwest also seeks judgment on that portion of Count IV which alleges a common law claim for misappropriation.

**I. Facts<sup>1</sup>**

Bliss is engaged in the business of developing, manufacturing, and marketing industrial clutches and other components used in various machines to manufacture products. (Compl. ¶¶ 1, 7.) One of Bliss' products is the well-known "Torc-Pac 40" wet-type clutch, which it designed and began to sell in approximately 1958. (*Id.* ¶¶ 7, 11.) In addition to manufacturing and selling clutches, Bliss manufactures and sells replacement parts for the Torc-Pac 40 and other clutches and repairs and remanufactures clutches for its customers. (*Id.* ¶ 8.) During the process of designing, developing, and manufacturing the Torc-Pac 40, Bliss invested substantial resources to create detailed drawings and blueprints of the Torc-Pac 40 and its components. \*945 (*Id.* ¶ 11.) Such information is highly confidential and proprietary to Bliss. (*Id.* ¶ 12.)

On January 23, 1996, Bliss furnished more than 150 unpublished copyrighted drawings, including those of the Torc-Pac 40, to Midwest for the purpose of obtaining a

quotation from Midwest for the manufacture of certain Torc-Pac parts. (*Id.* ¶ 16.) Bliss furnished the drawings to Midwest pursuant to a confidentiality agreement, in which Midwest acknowledged that the drawings belonged to Bliss, were confidential information, and were to be used solely for the purpose of preparing the quotation. (*Id.* ¶ 17.) The confidentiality agreement also precluded Midwest from copying or reproducing the drawings, furnishing them to others, or using them in the manufacture of the Torc-Pac 40, without Bliss' written consent. (*Id.*)

Midwest returned the drawings to Bliss on or about October 24, 2000, after counsel for Bliss demanded their return. (*Id.* ¶ 23.) Bliss alleges that prior to the time it furnished the drawings to Midwest, Midwest was manufacturing and/or distributing replicas of the Torc-Pac 40 and/or its parts, but that after receiving the drawings from Bliss, Midwest was able to refine its replicas and parts and began manufacturing and/or distributing an identical Torc-Pac 40 and parts. (*Id.* ¶¶ 19-20.) Bliss also alleges that Midwest began labeling and marketing its replica and parts using the Torc-Pac 40 trademark and began using the Torc-Pac 40 name in Midwest's informational and marketing materials without Bliss' authorization. (*Id.* ¶¶ 19, 21.) Moreover, Bliss claims that both before and after it received the drawings from Bliss, Midwest solicited several key employees with special knowledge of the Torc-Pac 40 product line away from Bliss for the purpose of obtaining Bliss' confidential and proprietary trade secrets, including customer lists. (*Id.* ¶ 22.)

On April 25, 2002, Bliss filed its complaint against Midwest alleging various claims based upon Midwest's use of the Torc-Pac 40 name and Bliss' confidential and proprietary information in the manufacture and sale of its replica Torc-Pac 40 and parts.

## II. Motion Standard

Midwest brings its motion under Fed.R.Civ.P. 12(c). A motion pursuant to Rule 12(c) may be brought after the close of the pleadings to raise various Rule 12(b) defenses. *Alexander v. City of Chicago*, 994 F.2d 333, 335 (7th Cir.1993). As with a Rule 12(b)(6) motion, a court must examine only the pleadings and accept all of the non-movant's allegations as true in ruling on a Rule 12(c) motion. *St. Paul Ins. Co. v. AFIA*, 937 F.2d 274, 279 (5th Cir.1991). A motion for judgment on the pleadings may be granted only where "it appears beyond doubt that the plaintiff cannot prove any set of facts that would support

his claim for relief." *Thomason v. Nachtrieb*, 888 F.2d 1202, 1204 (7th Cir.1989).

## III. Discussion

Midwest contends that it is entitled to judgment as a matter of law on Bliss' common law claims of misappropriation, tortious interference with contractual relations and advantageous business opportunity, unfair competition, and conversion upon two grounds. First, Midwest argues that these claims are displaced by MUTSA. Second, Midwest argues that Bliss' common law misappropriation claim and the other claims occurring before enactment of MUTSA and, thus, not affected by MUTSA's displacement provision, are untimely because those claims were filed beyond the three-year statute of limitations.

### A. Displacement Under MUTSA

The Michigan Legislature enacted MUTSA, Michigan's version of the Uniform Trade Secrets Act ("UTSA"), to take \*946 effect as of October 1, 1998. M.C.L. § 445.1910. MUTSA provides a statutory action and remedies for misappropriation of trade secrets. M.C.L. § 445.1903, 1904. The statute also displaces conflicting tort remedies for misappropriation of a trade secret. *CMI Int'l, Inc. v. Internet Int'l Corp.*, 251 Mich.App. 125, 132, 649 N.W.2d 808, 812-13 (2002) (per curiam). In particular, Section 8 of MUTSA provides that the "act displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret." M.C.L. § 445.1908(a). However, MUTSA does not displace contractual remedies, "[o]ther civil remedies that are not based upon misappropriation of a trade secret," or "[c]riminal remedies, whether or not based upon misappropriation of a trade secret." M.C.L. § 445.1908(2).

No Michigan state or federal court has interpreted or applied the displacement provision of MUTSA, although several state and federal courts have interpreted very similar versions of the UTSA adopted by other states. *See, e.g., Smithfield Ham & Prods. Co. v. Portion Pac, Inc.*, 905 F.Supp. 346, 348-49 (E.D.Va.1995) (interpreting Virginia UTSA and concluding that the plaintiff's tortious interference claims were not displaced); *Coulter Corp. v. Leinert*, 869 F.Supp. 732, 734-35 (E.D.Mo.1994) (interpreting Florida UTSA to conclude that the plaintiff's claims for unfair competition and an accounting were displaced but that the plaintiff's claim for breach of the

duty of confidentiality was not barred); *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 898 (Del.2002) (interpreting Delaware UTSA to conclude that the plaintiff's unfair competition and conspiracy claims were displaced); *Frantz v. Johnson*, 116 Nev. 455, 464-65, 999 P.2d 351, 357-58 (2000) (applying Nevada UTSA and concluding that the plaintiff's claims for misappropriation of confidential information, breach of fiduciary duty, intentional interference with contractual relations, intentional interference with prospective advantage, breach of the covenant of good faith and fair dealing, civil conspiracy, and unjust enrichment were displaced). In determining whether a claim is displaced, courts generally examine whether the claim is based solely upon the misappropriation of a trade secret. If so, the claim must be dismissed. See *Craig Neon, Inc. v. McKenzie*, 25 Fed.Appx. 750, 751-52, 2001 WL 1338434, at \*2 (10th Cir.2001) ("There is also no real dispute that plaintiff's fraud-and-deceit claim could stand alone even without proving that the sign plans were a trade secret."); *Thomas & Betts Corp. v. Panduit Corp.*, 108 F.Supp.2d 968, 971 (N.D.Ill.2000) (stating that "facts constituting a misappropriation of trade secrets give rise to liability under the [Illinois UTSA], but not under any other state law theory"); *Glasstech, Inc. v. TGL Tempering Sys., Inc.*, 50 F.Supp.2d 722, 730 (N.D. Ohio 1999) ("The preemption section of the UTSA has been interpreted to bar claims which are based entirely on factual allegations of misappropriation of trade secrets."); *Coulter Corp.*, 869 F.Supp. at 734 (stating that in light of the UTSA's displacement provision, "the issue becomes whether allegations of trade secret misappropriation alone comprise the underlying wrong; if so, the cause of action is barred"); *Smithfield Ham & Prods. Co.*, 905 F.Supp. at 348-49 ("In order to survive summary judgment ... a plaintiff must be able to show that the distinct theories of relief sought are supported by facts unrelated to the misappropriation of the trade secret."). In *Weins v. Sporleder*, 1999 SD 10, 2000 SD 10, 605 N.W.2d 488 (2000), the Supreme Court of South Dakota summarized the displacement analysis as follows:

South Dakota's adoption of the Uniform Trade Secrets Act, SDCL 37-29-7, prevents a plaintiff from merely restating \*947 their trade secret claims as separate tort claims. In analyzing claims for the purpose of applying the displacement provision, the issue is not what label the plaintiff puts on their [sic] claims. Rather, the court is to look beyond the label to the facts being asserted in support of the claims. *Leucadia, Inc. v. Applied Extrusion Technologies*, 755 F.Supp. 635 (D.Del.1991). A plaintiff "may not rely on acts that constitute trade secret misappropriation to support other causes of action." *Ed Nowogroski Ins., Inc. v. Rucker*, 88 Wash.App. 350, 944 P.2d 1093, 1097 (1997).

*Id.* 2000 SD at 13, 605 N.W.2d at 491-92. The court in *Micro Display Systems, Inc. v. Axtel, Inc.*, 699 F.Supp. 202 (D.Minn.1988), rejected the plaintiff's argument that the UTSA displaces only conflicting law regarding trade secrets as too broad because it "would allow simultaneous common law statutory actions in the same trade secret case." *Id.* at 204. However, the court also found that displacement "is not as broad as defendants suggest." *Id.* at 205. Rather, the court held: "Only that law which conflicts with the MUTSA is displaced. Conflicting law is that law dealing exclusively with trade secrets. To the extent a cause of action exists in the commercial area not dependent on trade secrets, that cause continues to exist." *Id.*

Although Bliss argues that its claims are not displaced, Bliss contends that the motion should be denied for another reason, namely, that the parties dispute whether the information at issue constitutes a trade secret governed by MUTSA. Bliss contends that in light of this dispute, the Court cannot determine the issue of displacement on a motion to dismiss, because to do so, the Court would need to resolve a disputed issue of fact. Thus, according to Bliss, if the information does not constitute a trade secret, Bliss' claims cannot be preempted by MUTSA and should be allowed to go forward. As support for its argument, Bliss cites *Stone Castle Financial, Inc. v. Friedman, Billings, Ramsey & Co.*, 191 F.Supp.2d 652 (E.D.Va.2002). In that case, the parties disputed whether the confidential information at issue constituted trade secrets. *Id.* at 659. The court observed that in such cases, "courts have refused to find the claims preempted." *Id.* at 658. The court also noted that in other cases where courts have found preemption on a motion to dismiss, they have determined that the information, as alleged, constitutes trade secrets. *Id.* at 658-69. The court observed:

The plain meaning of the statute, coupled with decisions interpreting similar preemption provisions in the context of a motion to dismiss, make it apparent that, unless it can be clearly discerned that the information in question constitutes a trade secret, the Court cannot dismiss alternative theories of relief as preempted by the [Virginia UTSA].

*Id.* at 659.

The primary authority cited by the *Stone Castle* court for the proposition that courts refuse to find preemption

where it has not been determined whether the information at issue is a trade secret was *Combined Metals of Chicago Limited Partnership v. Airtek, Inc.*, 985 F.Supp. 827 (N.D.Ill.1997). In *Combined Metals*, the plaintiff conceded that its breach of fiduciary duty claim would be preempted if its die and design specifications qualified as a trade secret, but argued that it should be allowed to fall back on that claim if the information did not qualify as a trade secret. *Id.* at 830. The court found merit to the argument, "at least in theory," and noted its reluctance to dismiss the claim based upon the defendant's failure to address it. *Id.* The court reasoned:

The ITSA clearly preempts all common law claims that are based on the misappropriation of a trade secret. By \*948 its plain language, however, the ITSA preemption provision applies only if the claim is based on the "misappropriation of a trade secret." The ITSA has no effect on a claim that is not based on the "misappropriation of a trade secret."

Thus, in the instant case, if the Airtek die and design specifications fail to qualify as a trade secret, how could the breach of fiduciary duty count be preempted under the ITSA? Again, the ITSA preempts only counts premised on the misappropriation of a trade secret. Thus, if the Airtek die and specifications is not a trade secret or secrets, the ITSA preemption provision is inapplicable.

*Id.* (internal citations and footnote omitted).

In *Learning Curve Toys, L.P. v. Playwood Toys, Inc.*, No. 94 C 6884, 1999 WL 529572 (N.D.Ill. July 20, 1999), the court held that a claim may be displaced even if the information at issue does not constitute a trade secret. *Id.* at \*3. The court noted that the purpose of the UTSA was to "codify all the various common law remedies for theft of ideas" and that "plaintiffs who believe their ideas were pilfered may resort only to the ITSA." *Id.* Thus, the court concluded:

the ITSA does not, as PlayWood contends, simply preempt common law claims for which misappropriation of a trade secret is an element. Rather, the provision eliminated common law claims based on conduct which might support an ITSA action. In other words, if the operative facts are arguably cognizable under the ITSA, any common law claim that might have been available on those facts in the past now no longer

exists in Illinois. This strict interpretation is fatal to PlayWood's idea misappropriation and unjust enrichment counterclaims ....

*Id.*; accord *Thomas & Betts Corp.*, 108 F.Supp.2d at 972-73 (noting that such an argument would render the UTSA's displacement provision "meaningless, for it would forbid preemption of state law claims until a final determination has been made with respect to whether the confidential information at issue rises to the level of a trade secret"). In its analysis, the *Learning Curve* court quoted from *Composite Marine Propellers, Inc. v. Van Der Woude*, 962 F.2d 1263 (7th Cir.1992) (per curiam), where, in considering whether the plaintiff could maintain unfair competition and fiduciary duty claims based upon the defendants' use of the plaintiff's secret information, the Seventh Circuit stated: "Illinois has abolished all common law theories of misuse of such information. Unless defendants misappropriated a (statutory) trade secret, they did no legal wrong." *Id.* at 1265. See also *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 898 (Del.2002) (implicitly rejecting the plaintiff's argument that "the dismissal of [its] common law claims was premature because the trial court ha[d] not yet determined that a trade secret exists"). *BioCore, Inc. v. Khosrowshahi*, 96 F.Supp.2d 1221 (D.Kan.2000), cited by Midwest, is consistent with *Learning Curve*. In *BioCore*, the court rejected the plaintiffs' contention that they could still assert a claim for misappropriation of confidential information even if the defendant did not misappropriate trade secrets. *Id.* at 1236-37. The court observed that Kansas courts do not distinguish between trade secrets and confidential information, and stated that "[e]ven if confidential information can be something less than a trade secret, it must at least be a trade secret to give its owner a property right in it." *Id.* at 1238.

<sup>11</sup> For the reasons stated by the court in *Learning Curve*, the Court concludes that the disputed status of information as a trade secret does not preclude a court \*949 from determining whether a claim or claims are displaced by the MUTSA. Because the purpose of the UTSA is "to preserve a single tort cause of action under state law for misappropriation ... and thus to eliminate other tort causes of action founded on allegations of trade secret misappropriation," *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 755 F.Supp. 635, 637 (D.Del.1991), allowing otherwise displaced tort claims to proceed on the basis that the information may not rise to the level of a trade secret would defeat the purpose of the UTSA. Thus, "[u]nless [Midwest] misappropriated a (statutory) trade secret, [it] did no legal wrong."

*Composite Marine Propellers, Inc.*, 962 F.2d at 1265.

### 1. Tortious Interference

<sup>[2]</sup> <sup>[3]</sup> <sup>[4]</sup> To establish a claim for tortious interference with a contract, a plaintiff must allege: (1) the existence of a contract; (2) a breach; and (3) an unjustified instigation of the breach by the defendant. *Mahrle v. Danke*, 216 Mich.App. 343, 350, 549 N.W.2d 56, 60 (1996). The elements of tortious interference with a business relationship are: (1) the existence of a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy by the defendant; (3) intentional interference by the defendant which induces or causes a breach or termination of the relationship or expectancy; and (4) damage to the plaintiff. *BPS Clinical Labs. v. Blue Cross & Blue Shield of Mich.*, 217 Mich.App. 687, 698, 552 N.W.2d 919, 925 (1996) (per curiam). A plaintiff seeking to establish a tortious interference claim

must allege the intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose invading plaintiff's contractual rights or business relationship. Under the latter instance, plaintiff necessarily must demonstrate, which specificity, affirmative acts by the interferor which corroborate the unlawful purpose of the interference.

*Feldman v. Green*, 138 Mich.App. 360, 369-70, 360 N.W.2d 881, 886 (1984) (per curiam). An act does not constitute improper motive or interference "[w]here the defendant's actions were motivated by legitimate business reasons." *BPS Clinical Labs.*, 217 Mich.App. at 699, 552 N.W.2d at 925. "However, where a defendant's actions overreach the bounds of permissible interference and improperly sabotage the contractual agreements of others, a defendant is not immune from liability." *Kavanaugh v. VMC Indus., Inc.*, No. 213219, 2000 WL 33400199, at \*3 (Mich.App. Nov. 1, 2000) (per curiam).

In paragraph 60 of its complaint, Bliss alleges: "Despite such knowledge [of Bliss's contractual and advantageous business relationships], Midwest Brake intentionally solicited, with the knowledge and use of Bliss' trade secrets ... some or all of Bliss' Torc-Pac 40 business. Such solicitation was done without justification and for illegal, malicious and/or improper purpose." (Compl.¶

60.) Midwest contends that Bliss' intentional interference claim is barred because it relies solely upon allegations of trade secret misappropriation. If the three paragraphs set forth in Count VI were the only possible factual allegations relating to the tortious interference claim, the Court would agree that the claim is based solely upon misappropriation of trade secrets. However, paragraph 57 incorporates all of the general allegations of the complaint into the tortious interference claim. While those allegations generally pertain to misappropriation of trade secrets, Bliss also alleges that Midwest labeled and marketed its replica and parts using the Torc-Pac 40 trademark and included the Torc-Pac 40 name in its marketing and informational materials. (*Id.* ¶¶ 19, 21.) Bliss also contends that "[s]uch \*950 unauthorized use was intentional, deceitful and was intended to cause and, in fact, caused confusion among Bliss' customers and others in the marketplace." (*Id.* ¶ 21.) It is not clear whether those allegations are related to the tortious interference claim, but if Bliss' claim is that Midwest used the Torc-Pac 40 trademark or name in soliciting Bliss' customers, then Bliss' tortious interference claim would be based upon wrongful conduct independent of the misappropriation of trade secrets. Further discovery may shed more light on this claim, and Midwest is not precluded from raising it again on a motion for summary judgment.<sup>2</sup> Therefore, the Court will deny the motion with regard to the tortious interference claim.

### 2. Unfair Competition

In support of its unfair competition claim, Bliss alleges that "[t]he foregoing conduct constitutes an unfair method of competition." (*Id.* ¶ 63.) As Midwest notes, much of the "foregoing conduct" involves the alleged misappropriation of trade secrets. To the extent that the unfair competition claim is based upon the theft or misuse of trade secrets, the claim would be preempted. However, as indicated above, Bliss also alleges that Midwest used Bliss' Torc-Pac 40 trademark and name in attempting to market its replica and parts to Bliss' customers. Based upon the allegations in the complaint, it is unclear whether Midwest's alleged use of the Torc-Pac 40 trademark and name are independent of the conduct supporting the misappropriation claim. If so, such conduct would support a claim for unfair competition without regard to the existence of trade secrets. See *Parameter Driven Software, Inc. v. Mass. Bay Ins. Co.*, 25 F.3d 332, 336 n. 4 (6th Cir.1994). Therefore, the Court will deny Midwest's motion on the unfair competition claim.

### 3. Conversion



<sup>151</sup> In its conversion claim, Bliss alleges that it “is the true and rightful owner of Bliss’ confidential proprietary and trade secret rights in the Torc-Pac 40.” (*Id.* ¶ 66.) Bliss also alleges that by improperly using such information without Bliss’ authorization, “Midwest Brake has deprived Bliss of its exclusive, confidential proprietary and trade secret rights and interests in the Torc-Pac 40.” (*Id.* ¶¶ 67, 68.) Midwest contends that removing the trade secret allegations would effectively eviscerate Bliss’ conversion claim. The Court agrees. Bliss’ allegations center exclusively on Midwest’s alleged unauthorized use of Bliss’ trade secrets. There are no allegations in the complaint that give rise to a conversion claim apart from the use of trade secrets. Bliss contends that the complaint contains adequate allegations to support a conversion claim based upon Midwest’s alleged wrongful retention and use of Bliss’ physical property, such as blueprints and drawings, as well as intangible property, without Bliss’ consent. In spite of Bliss’ argument, the focus of the conversion claim is upon trade secrets. A similar argument was rejected in *Thomas & Betts Corp. v. Panduit Corp.*, 108 F.Supp.2d 968 (N.D.Ill.2000). There, the plaintiff argued that its conversion claim was not based merely upon the theft of confidential information, but also alleged \*951 the taking of the actual computers, disks, and paper belonging to the plaintiff. The court disagreed, noting that those items had little value apart from the confidential information they contained. *Id.* at 973. Here, Bliss’ complaint makes clear that it is trade secrets, rather than tangible property, that was converted, and there is no allegation that Bliss seeks damages for the taking of the physical property (the paper containing the blueprints and drawings). Therefore, the conversion claim will be dismissed to the extent that it is based upon acts occurring after passage of MUTSA.

#### 4. Common Law Misappropriation

<sup>161</sup> Bliss contends that its common law misappropriation claim may proceed along with its misappropriation claim under MUTSA, because Michigan’s common law of trade secrets does not conflict with MUTSA. The Court rejects this argument because it “would allow simultaneous common law and statutory actions in the same trade secret case.” *Micro Display Sys., Inc.*, 699 F.Supp. at 204. Bliss does not argue that its common law claim is not based upon the theft of trade secrets, nor does it attempt to distinguish its common law claim from its statutory claim. Therefore, the Court concludes that Bliss’ common law misappropriation claim is displaced to the extent it relies upon allegations of misappropriation occurring after the effective date of MUTSA.

#### B. Statute of Limitations

Midwest contends that Bliss cannot possibly have a claim for common law misappropriation because: (1) such a claim occurring after October 1, 1998, the date MUTSA took effect, would be displaced by MUTSA; and (2) any claim arising prior to enactment of MUTSA would be barred by the applicable three-year limitations period, as Bliss filed its complaint on April 25, 2002—more than three years after MUTSA became effective. In addition, Midwest notes that Michigan did not recognize a continuing violation theory for tolling the statute of limitations in misappropriation cases prior to the enactment of MUTSA, *see Shatterproof Glass Corp. v. Guardian Glass Co.*, 322 F.Supp. 854, 869 (E.D.Mich.1970), and MUTSA does not apply to any continuing misappropriation that began before the effective date of the act, M.C.L. § 445.1910.

Bliss does not dispute that its common law misappropriation claim is subject to the three-year limitations period set forth in M.C.L. § 600.5805(9), *see Pilkington Bros., P.L.C. v. Guardian Indus. Corp.*, No. 83–5260, 1986 WL 9876, at \*2 (E.D.Mich. June 9, 1986), and concedes that common law misappropriation is not recognized as a “continuing tort” in Michigan. Bliss argues, however, that the discovery rule applies to its common law claim for misappropriation. The discovery rule provides that the limitations period “does not begin to run until the plaintiff discovers, or through the exercise of reasonable diligence should have discovered, that he had a possible cause of action.” *Thomas v. Process Equip. Corp.*, 154 Mich.App. 78, 88, 397 N.W.2d 224, 228 (1986). Bliss cites *Rainbow Nails Enterprises, Inc. v. Maybelline, Inc.*, 93 F.Supp.2d 808 (E.D.Mich.2000), as support for its contention that the discovery rule applies to its misappropriation claim. There, the court stated that the “three-year period begins to run ‘when the plaintiff knew or reasonably should have known of [the] defendant’s misappropriation,’ and a plaintiff has ‘an affirmative duty ... to exercise reasonable diligence to discover its claim.’” *Id.* at 831–32 (quoting *Pilkington Bros.*, 1986 WL 9876, at \*3).

Midwest contends that the discovery rule does not apply to misappropriation claims and that *Rainbow Nails* is not an \*952 accurate statement of the law. Midwest notes that *Rainbow Nails* relied upon *Pilkington Brothers, P.L.C. v. Guardian Industries Corp.*, No. 83–5260, 1986 WL 9876 (E.D.Mich. June 9, 1986), which in turn relied upon *Reynolds-Southwestern Corp. v. Dresser Industries*, 438 S.W.2d 135 (TexCivApp—Hous (14 Dist.) 1969). *See Pilkington Bros.*, 1986 WL 9876, at \*3. Midwest further notes that the *Reynolds-Southwestern* holding regarding the discovery rule was abrogated by the Texas Supreme

Court's decision in *Computer Associates International, Inc. v. Altai, Inc.*, 918 S.W.2d 453 (1996). In *Computer Associates*, the court held that the discovery rule does not apply to misappropriation of trade secret cases. *Id.* at 457–58. The court observed that it has only applied the rule “in those cases where the nature of the injury incurred is inherently undiscoverable and the evidence of injury is objectively verifiable.” *Id.* at 456. Further, the court stated: “Inherently undiscoverable encompasses the requirement that the existence of the injury is not ordinarily discoverable, even though due diligence has been used.” *Id.* The court found that in contrast to other types of cases, such as malpractice and breach of fiduciary duty, trade secret misappropriation is “generally capable of detection within the time allotted for bringing such suits.” *Id.* at 456–57. Finally, the court stated: “No state supreme court ... has yet adopted the discovery rule exception for trade secret cases as an exercise of its common law jurisdiction.... We decline to be the first.” *Id.* at 458.

In providing guidance for application of the discovery rule, the Michigan Supreme Court has stated that

in deciding whether to strictly enforce a period of limitation or impose the discovery rule, [a court] must carefully balance when the plaintiff learned of her injuries, whether she was given a fair opportunity to bring her suit, and whether defendant's equitable interest would be unfairly prejudiced by tolling the statute of limitations.

*Stephens v. Dixon*, 449 Mich. 531, 536, 536 N.W.2d 755, 757 (1995). The *Stephens* court noted that it has only applied the discovery rule in medical malpractice cases, negligent misrepresentation cases, products liability actions for asbestos-related diseases, and products liability actions for pharmaceutical products. *Id.* at 537, 536 N.W.2d at 757. The court stated that the discovery rule was appropriate in such cases because “the concern for protecting defendants from ‘time-flawed evidence, fading memories, lost documents, etc.’ is less significant in these cases.” *Id.* at 537, 536 N.W.2d at 757–58 (quoting *Larson v. Johns-Manville Sales Corp.*, 427 Mich. 301, 312, 399 N.W.2d 1, 6 (1986) (quoting *Eagle-Picher Indus., Inc. v. Cox*, 481 So.2d 517, 523 (Fla.App.1985))). The *Stephens* court held that the discovery rule does not apply in cases involving ordinary negligence where the plaintiff merely misjudges the severity of her injury—in that case, arising out of an

automobile accident—because the plaintiff in such a case should know at the time of the injury whether she has been injured. *Id.* at 537–38, 536 N.W.2d at 758.

No Michigan court has considered whether the discovery rule may apply in a trade secrets case. In *Brennan v. Edward D. Jones & Co.*, 245 Mich.App. 156, 626 N.W.2d 917 (2001) (per curiam), however, the Michigan Court of Appeals considered whether the discovery rule should be applied to commercial conversion actions. The court held that the discovery rule should not apply to such an action:

We conclude that the strong public policies favoring finality in commercial transactions, protecting a defendant from stale claims, and requiring a plaintiff to diligently pursue his claim outweigh \*953 the prejudice to plaintiffs and militate against applying the discovery rule in the context of commercial conversion cases. The majority of states have also refused to apply the discovery rule in commercial conversion cases.

*Brennan*, 245 Mich.App. at 160, 626 N.W.2d at 920 (citations omitted). The court also rejected the plaintiffs' assertion that the law does not require property owners to verify that their possessions have not been stolen, noting that:

those jurisdictions that have refused to apply the discovery rule in commercial conversion cases have presumed that property owners “know what and where their assets are, despite the fact that the presumption may work a hardship upon the property owner who fails to discover his or her ownership rights until after the period has run.”

*Id.* at 160–61, 626 N.W.2d at 920 (quoting *Fuscellaro v. Indus. Nat'l Corp.*, 117 R.I. 558 563, 368 A.2d 1227 (1977)).

<sup>[7]</sup> Based upon the Michigan Supreme Court's limited application of the discovery rule, the Court concludes that the Michigan Supreme Court would hold, consistent with the Texas Supreme Court, that the discovery rule does not apply to trade secrets cases. As is the case with conversion of tangible property, misappropriation of trade secrets is not the type of undiscoverable wrong which generally merits the application of the discovery rule. Just as a property owner should know what and where his assets are, the owner of a trade secret must take steps to ensure the secrecy of proprietary information and monitor

usage by competitors. In this regard, the Texas Supreme Court has observed:

[W]e live in a world of high employee mobility and easy transportability of information. Under these circumstances, it is not unexpected that a former employee will go to work for a competitor and that the competitor might thereby acquire trade secrets.... Vigilance in the area of trade secrets is required, particularly because once a trade secret is made public all ownership is lost. High employee mobility and critical interest in maintaining a proprietary interest in a trade secret are endemic to the computer software industry. Suspicions should abound when a competitor markets a product similar to that previously developed by a former employer after one of the former employer's employees begins to work for the competitor.

*Computer Assocs. Int'l*, 918 S.W.2d at 457 (internal citations omitted). In a similar vein, Bliss recognized the importance of protecting its confidential information when it required Midwest to sign a confidentiality agreement ensuring limited use of the drawings and blueprints by Midwest. Bliss was obviously aware of the risks associated with disclosure of its confidential information to others. If Midwest was using Bliss' trade secrets to market a replica Torc-Pac 40 and parts as Bliss claims, Bliss could have discovered the misappropriation through vigilant inquiry and monitoring of Midwest. Thus, the Court will not apply the discovery rule to Bliss' misappropriation claim, and that claim will be dismissed

in its entirety.

The Court will also dismiss the conversion claim because it is governed by the three-year limitations period and the discovery rule does not apply to such a claim. *Brennan*, 245 Mich.App. at 158, 160-61, 626 N.W.2d at 917, 920. Although the Court has determined, at least at this juncture, that Bliss' unfair competition and tortious interference claims are not displaced by MUTSA, the Court concludes that those claims, which are also subject to the three-year limitations period, *see James v. Logee*, 150 Mich.App. 35, 38, 388 N.W.2d 294, 296 (1986) (per curiam) (tortious interference); *Deuer Mfg., Inc. v. \*954 Kent Prods., Inc.*, Nos. 89-1583, 89-1588, at \*2 (Fed.Cir. June 12, 1990) (unfair competition), should be dismissed to the extent they rely upon acts occurring more than three years prior to April 25, 2002—the date Bliss filed its complaint. Furthermore, the Court concludes, for the reasons discussed in connection with the misappropriation claim, that the discovery rule does not apply to unfair competition and tortious interference claims. Therefore, those claims will be dismissed in part.

#### IV. Conclusion

For the foregoing reasons, the Court will grant in part and deny in part Midwest's motion for judgment on the pleadings. Bliss' common law misappropriation and conversion claims will be dismissed. Bliss' unfair competition and tortious interference claims will be dismissed only to the extent that the acts supporting those claims occurred prior to April 25, 1999.

An Order consistent with this Opinion will be entered.

#### Footnotes

<sup>1</sup> The facts herein are as set forth in Bliss' complaint and, for purposes of this motion, are taken as true.

<sup>2</sup> For example, it may be that but for Midwest's alleged misappropriation of trade secrets, Midwest would not have used the Torc-Pac 40 trademark and/or name. However, given Bliss' allegation that Midwest manufactured and/or distributed some replicas and/or similar parts prior to receiving the drawings from Bliss, it is unclear from the complaint whether Midwest's use of the trademark and/or name arose solely out of the misappropriation of trade secrets. This uncertainty may be clarified at the summary judgment stage.

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**EXHIBIT C**

65 Wash.2d 157

Supreme Court of Washington, Department 2.

Harry B. CALBOM, Jr., Respondent,

v.

Halvor KNUDTZON, Sr., and Alice Knudtzon,  
husband and wife, and Halvor Knudtzon, Jr., and  
Esther Knudtzon, husband and wife, Appellants.

No. 37076. | Oct. 29, 1964. | Rehearing Denied Dec.  
1, 1964.

Action for interference with an inducing a breach of an attorney-client relationship which had been entered into for probate of an estate. The Superior Court, Cowlitz County, Warner Poyhonen, J., entered judgment for plaintiff and defendants appealed. The Supreme Court, Hamilton, J., held that evidence sustained finding of existence of attorney-client relationship for probate of an estate, and of knowledge of facts giving rise to existence of the relationship on the part of defendants.

Judgment affirmed.

West Headnotes (13)

[1]

**Torts**

☞Contracts

**Torts**

☞Prospective Advantage, Contract or  
Relations; Expectancy

Intentional and unjustified third-party  
interference with valid contractual relations or  
business expectancies constitutes a tort.

18 Cases that cite this headnote

[2]

**Torts**

☞Contracts

**Torts**

☞Prospective Advantage, Contract or  
Relations; Expectancy

Basic elements going into a prima facie establishment of the tort of wrongful interference with a contractual relationship are existence of a valid contractual relationship or business expectancy, knowledge of the relationship or expectancy of part of the interferer, intentional interference inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the party whose relationship or expectancy has been disrupted.

55 Cases that cite this headnote

[3]

**Torts**

☞Improper Means; Wrongful, Tortious or  
Illegal Conduct

Ill will, spite, defamation, fraud, force or coercion, of interferer, are not essential ingredients of tort of interference with a contractual relationship, although they may be shown for such bearing as they might have upon the defense of privilege.

3 Cases that cite this headnote

[4]

**Torts**

☞Burden of Proof

Burden of showing privilege for interference with a contractual relationship or business expectancy rests upon the interferer.

11 Cases that cite this headnote

[5]

**Torts**

☞Defense, Justification or Privilege in General

Basic issue raised by assertion of defense of privilege in an action for inducing a breach of a contractual relationship is whether, under the

circumstances of the particular case, the interferer's conduct is justifiable on basis of, among other things, legitimate business competition, financial interest, responsibility for welfare of another, directing business policy, and giving of requested advice.

13 Cases that cite this headnote

[6]

**Torts**

☛ Knowledge and Intent; Malice

Although knowledge of the existence of business relationship in issue is an essential element in establishing liability for wrongful interference therewith, it is sufficient if the evidence reveals that the alleged interferer had knowledge of facts giving rise to existence of the relationship, and it is not necessary that the interferer understand the legal significance of such facts.

10 Cases that cite this headnote

[7]

**Torts**

☛ Attorneys

Evidence, in action by an attorney for interference with and inducing a breach of an attorney-client relationship, sustained finding of existence of such relationship for probate of an estate, and of knowledge of facts giving rise to existence of the relationship on the part of defendants.

3 Cases that cite this headnote

[8]

**Attorney and Client**

☛ Government, Employment by or Representation Of

Plaintiff's employment as attorney for an estate did not create a conflict of interest with his duties as a member of a local school board, and

did not render employment of attorney for the estate invalid even though decedent's construction company had pending before school board a bid for construction at time attorney initiated probate proceedings, where attorney stepped down from the board at time it considered the bid, board did not consider the bid until time at which attorney's services for the estate had been terminated, the bid was rejected, and neither attorney nor his successor represented the estate before the board.

1 Cases that cite this headnote

[9]

**Torts**

☛ Attorneys

Evidence, in action for interference with and inducing a breach of attorney-client relationship, sustained finding that defendants' interference with the relationship which was entered into for the purpose of carrying out probate of a decedent's estate was malicious, intentional and was not privileged upon basis of defendants' relationship with widow of decedent as tax consultants of decedent and widow.

5 Cases that cite this headnote

[10]

**Damages**

☛ Injuries Affecting Limited or Special Rights or Interests

Measure of damages for wrongful interference with attorney-client relationship which had been entered into for purpose of carrying out probate of an estate was an amount equal to the fee attorney would have received had he concluded probate of the estate, less amount attorney refused for services performed prior to his termination, and damages were not assessable on basis of net profits attorney would have realized had his services been continued in absence of evidence as to costs which would have been expended in performance of services.

Cases that cite this headnote

[11]

**Evidence**

☛Relation to Issues in General

**Evidence**

☛Showing Intent or Malice or Motive

**Evidence**

☛Showing Knowledge

In civil actions evidence concerning similar acts, conduct, or representations is inadmissible for purpose of proving acts charged in the complaint, although proof of separate but similar acts may be received for purpose of showing intention, motive or knowledge of defendant in connection with the acts or representations upon which the action is based.

Cases that cite this headnote

[12]

**Torts**

☛Admissibility

Evidence relating to purported interference by defendants with probate of an estate by another attorney prior to defendants' interference with plaintiff's attorney-client relationship with widow of a decedent for probate purposes was admissible on issues of intent and knowledge.

Cases that cite this headnote

[13]

**Appeal and Error**

☛On Trial Without a Jury

If hearsay was admitted, it would be considered harmless error, where trial was to the court, and trial court's findings were supported by competent evidence.

1 Cases that cite this headnote

**Attorneys and Law Firms**

**\*158 \*\*149** Evans, McLaren, Lane, Powell & Moss, Frank W. Draper, Seattle, for appellants.

Atwell, Moore, Walstead & Hallowell, Longview, for respondent.

**Opinion**

HAMILTON, Judge.

Plaintiff (respondent) instituted this action seeking recovery of damages upon the grounds that **\*159** defendants (appellants) had interfered with an induced a breach of an attorney-client relationship. Defendants appeal from an adverse judgment.

On May 1, 1958, K. T. Henderson, sole proprietor of a successful general contracting business, unexpectedly died of a heart attack. His death created pressing problems pertaining to the continuing operations of his business. Mrs. Jessie Bridges, Mr. Henderson's office manager, immediately contacted plaintiff, who was personally acquainted with the Henderson and who, as a practicing attorney, had served them occasionally. Plaintiff, in substance, advised Mrs. Bridges that before he could intelligently give counsel he would have to know whether Mr. Henderson left a will and, if so, who was named as executor or executrix therein, and the provisions thereof. Mrs. Bridges then contacted Mrs. Henderson and a meeting was arranged between plaintiff, Mrs. Henderson, and Mrs. Bridges. At this meeting, it was disclosed **\*\*150** that Mr. Henderson had left a will naming Mrs. Henderson his executrix, and that she desired to continue the business. She requested that plaintiff make arrangements to carry out her wishes.

Plaintiff prepared the necessary papers and at 4 p.m. on May 1, 1958, appeared with Mrs. Henderson and Mrs. Bridges before the Superior Court of Cowlitz County, at which time the will was offered for probate, Mrs. Henderson designated as executrix, and an order authorizing continuance of the business was entered. The following day, Mrs. Henderson was fully qualified as executrix and, with plaintiff's assistance, accounts at the bank were adjusted whereby business obligations, including the payroll of the business then due, were met, and a letter relating to and confirming an outstanding bid to a local school district for school construction dispatched. Plaintiff prepared to perfect and continue probate of the estate.

On May 6th, it was necessary for plaintiff to go to



California. Before leaving, he checked with Mrs. Bridges to ascertain any immediate needs, and was informed there was none. Between May 6th and May 8th, Halvor Knudtson, Sr., the senior member of the firm of Knudtson and Associates, \*160 certified public accountants, returned from a trip. On May 8th, he was consulted by Mrs. Henderson relative to performing the tax work in connection with the estate. At this meeting, Mr. Knudtson inquired of Mrs. Henderson if she had selected an attorney, to which she replied 'Yes, I suppose Harry Calbom.' Whereupon, Mr. Knudtson shook his head and indicated, by inference at least, that plaintiff was unsatisfactory. Mr. Knudtson thereupon recommended a list of attorneys from which one was selected.

On May 9th, plaintiff returned and was advised by Mrs. Bridges that another attorney was handling the probate matter. Thereupon, he contacted Mr. Knudtson, Sr., and requested a meeting, which was arranged for that morning. Mr. Knudtson, who was at home when contacted by plaintiff, telephoned his son at the office and advised him that plaintiff was coming in to confer with them, and that they would give him 'a line of hot air.' When confronted by plaintiff at their office, plaintiff was advised by Mr. Knudtson, Sr., that they, as accountants, hired and fired attorneys for their clients and made reference to a former probate matter in which they had been instrumental in discharging the attorney.

Subsequently, an effort was made to pay plaintiff for services he had performed and secure his signature upon a notice of substitution of attorneys. Plaintiff refused to submit a bill for his services up to the time of his termination, refused to agree to a substitution of attorneys, and instituted the present action against the defendants alleging intentional interference with plaintiff's employment contract.

Trial of the action consumed several days, at the conclusion of which the trial court rendered an oral decision in favor of plaintiff and thereafter entered findings of fact, conclusions of law, and judgment. The essence of the trial court's findings were: (a) Plaintiff was an ethical, reputable, and competent attorney; (b) plaintiff had a contract with the surviving widow to probate the estate of K. T. Henderson, pursuant to which plaintiff undertook performance of the probate proceedings; (c) defendants, with knowledge of plaintiff's contract of employment, intentionally, \*161 maliciously, and without justification induced the surviving widow to discharge plaintiff as attorney for the estate, and (d) plaintiff suffered damage in the amount of the reasonable attorney's fee he would have earned had he continued to the conclusion of the probate.

On appeal, defendants make 13 assignments of error, which reduce themselves to five basic contentions: (1) The evidence does not support the trial court's finding that a contract of employment existed, or that defendants had knowledge of such contract; (2) the contract of employment, if any, was illegal and contrary to public policy; (3) the interference, if any, with \*\*151 the relationship was justified; (4) plaintiff failed to submit competent proof on the issue of damages and would, if entitled to recover, be entitled to recover only nominal damages; and (5) the trial court erred in admitting certain evidence.

<sup>[1]</sup> Intentional and unjustified third-party interference with valid contractual relations or business expectancies constitutes a tort, with its taproot embedded in early decisions of the courts of England, e.g.: *Keeble v. Hickeringill*, 11 East 574, 11 Mod. 74, 130, 3 Salk 9, 103 Eng.Rep. 1127 (1809); *Lumley v. Gye*, 2 El. & Bl. 216, 118 Eng.Rep. 749 (1853); *Bowen v. Hall*, 6 Q.B.D. 333, 50 L.J.Q.B. 305 (1881); *Temperton v. Russell*, 1 Q.B. 715, 62 L.J.Q.B. 412 (1893); *South Wales Miners' Federation v. Glamorgan Coal Co.*, A.C. 239, 74 L.J.K.B. 525 (1905).

From and with the English decisions, the tort has become engraved upon American law, generally unsullied in principle, although with some case by case distinctions. See, *Carpenter, Interference with Contract Relations*, 41 *Harv.L.Rev.* 728; *Prosser on Torts* (3rd ed.) s 123, p. 950; 30 *Am.Jur.*, *Interference* s 61, p. 95; 84 *A.L.R.* 43; 9 *A.L.R.2d* 228; 26 *A.L.R.2d* 1227.

We have recognized the tort in its various forms. *Jones v. Leslie*, 61 Wash. 107, 112 P. 81, 48 L.R.A.,N.S., 893 (1910); *Seidell v. Taylor*, 86 Wash. 645, 151 P. 41 (1915); *Pacific Typesetting Co. v. International Typographical Union*, 125 Wash. 273, 216 P. 358, 32 *A.L.R.* 767 (1923); \*162 *Sears v. International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 524*, 8 Wash.2d 447, 112 P.2d 850 (1941); *Hein v. Chrysler Corp.*, 45 Wash.2d 586, 277 P.2d 708 (1954); *Titus v. Tacoma Smeltermen's Union Local No. 25, International Union of Mine, Mill and Smelter Workers*, 62 Wash.2d 461, 383 P.2d 504 (1963).

The fundamental premise of the tort-that a person has a right to pursue his valid contractual and business expectancies unmolested by the wrongful and officious intermeddling of a third party-has been crystallized and defined in *Restatement, Torts* s 766, as follows:

'Except as stated in Section 698 (betrothal promises), one who, without a privilege to do so, induces or otherwise purposely causes a third person not to

‘(a) perform a contract with another, or

‘(b) enter into or continue a business relation with another is liable to the other for the harm caused thereby.’

Clause (a) relates to those cases in which the purposeful interference of a third party induces or causes a breach of an existing and valid contract relationship. Clause (b) embraces two types of situations. One is that in which the interferor purposely induces or causes a party not to enter into a business relationship with another. The second is where a business relationship, terminable at the will of the parties thereto, exists, and the intermeddler purposely induces or causes a termination of such relationship. The distinction between the situations propounded by clauses (a) and (b) lies not so much in the nature of the wrong, as in the existence or nonexistence, and availability as a defense, of privilege or justification for the interference. Restatement, Torts s 766, Comment c.

<sup>[2]</sup> <sup>[3]</sup> The basic elements going into a prima facie establishment of the tort are (1) the existence of a valid contractual relationship or business expectancy; (2) knowledge of the relationship or expectancy on the part of the interferor; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resultant damage to the party whose relationship or expectancy \*163 has been disrupted. Ill will, spite, defamation, fraud, force, or coercion, on the part of the interferor, are not essential ingredients, although such may be shown for such bearing as they may have upon the defense of privilege.

**\*\*152** <sup>[4]</sup> <sup>[5]</sup> The burden of showing privilege for interference with the expectancy involved rests upon the interferor. Prosser on Torts (3rd ed.) s 123, p. 967; 30 Am.Jur., Interference s 57, p. 93. The basic issue raised by the assertion of the defense is whether, under the circumstances of the particular case, the interferor's conduct is justifiable, bearing in mind such factors as the nature of the interferor's conduct, the character of the expectancy with which the conduct interferes, the relationship between the various parties, the interest sought to be advanced by the interferor, and the social desirability of protecting the expectancy or the interferor's freedom of action. Restatement, Torts s 767. Some of the privileges and their limitations, which have been recognized, depending upon the circumstances and the factors involved, are legitimate business competition (Restatement, Torts s 768), financial interest (Restatement, Torts s 769), responsibility for the welfare of another (Restatement, Torts s 770), directing business policy (Restatement, Torts s 771), and the giving of requested advice (Restatement, Torts s 772).

Against the backdrop of the foregoing, we turn to defendants' contentions.

Defendants first assert that the evidence does not support the trial court's finding concerning the existence of an attorney-client relationship between plaintiff and Mrs. Henderson whereby plaintiff would undertake the 'long term' probate of the estate. This assertion is predicated upon the argument that the testimony of Mrs. Henderson and Mrs. Bridges, coupled with the surrounding circumstances, indicate that Mrs. Henderson only intended to engage plaintiff's services for the limited purpose of admitting the will to probate and securing an order authorizing continuation of the business.

**\*164** We agree that the evidence presented by defendants upon this point is susceptible of the interpretation defendants would place upon it. However, such is not the only interpretation finding support in the evidence as a whole. The evidence reveals that at the meeting on May 1, 1958, after plaintiff had explained the necessity for probate proceedings, Mrs. Henderson stated to plaintiff she wanted him to 'handle this thing for me.' Plaintiff thereupon prepared all papers incidental to the admission of the will to probate; arranged for the testimony of the witnesses to the will; appeared in court and presented the testimony of Mrs. Henderson, Mrs. Bridges, and the witnesses to the will; provided for, counseled, and participated in arrangements to meet pending business obligations; and, to all intents and purposes, became the attorney in fact and of record for the estate. Although the relationship thus established was terminable at the will of the parties, we are convinced the evidence and the reasonable inferences therefrom amply support the trial court's finding of an existing attorney-client relationship which plaintiff had every right to anticipate would continue, and which would have continued but for the intervention of defendants. Under such circumstances, we will not disturb the trial court's finding. Thorndike v. Hesperian Orchards, Inc., 54 Wash.2d 570, 343 P.2d 183 (1959).

Defendants next assert that the evidence does not support the trial court's finding that they had knowledge of the existence of the attorney-client relationship in issue. Here again, the evidence and the inferences therefrom produce a conflict. On the one hand, defendants claim they were advised by Mrs. Bridges that plaintiff's employment was limited. On the other hand, plaintiff's evidence indicates that defendants were not only aware of plaintiff's position as attorney in fact and of record for the estate, but in fact boasted of their ability to terminate that relationship. Additional evidence supportive of plaintiff's version is

the admission of defendants that they determined to give plaintiff a 'line of hot air' when he called upon them, rather than \*165 rely upon what they now assert was their knowledge of his status in the estate.

[6] Although knowledge of the existence of the business relation- ship in issue \*\*153 is an essential element in establishing liability for interference therewith, it is sufficient if the evidence reveals that the alleged interferor had knowledge of facts giving rise to the existence of the relationship. It is not necessary that the interferor understand the legal significance of such facts. Restatement, Torts s 766, Comment e.

[7] We are satisfied that the evidence presented supports the trial court's finding of the requisite knowledge of the circumstances on the part of defendants. The finding falls within the ambit of the rule of Thorndike v. Hesperian Orchards, Inc., supra, and will not be disturbed.

[8] Defendants next contention is that plaintiff's employment as attorney for the estate created a conflict of interest with his duties as a member of the local school board, and was, therefore, contrary to public policy and invalid. This is predicated upon the fact that the Henderson Construction Company had pending before the school board a bid for school construction at the time plaintiff initiated the probate proceedings.

We find no merit in this contention because (a) plaintiff stepped down from the school board at the time it considered the bid; (b) the board did not consider the bid until May 12, 1958, at which time plaintiff's services with the estate had been terminated; (c) the board, upon advice of the prosecuting attorney, rejected the bid; and (d) neither plaintiff nor his successor represented the estate before the school board. It is possible that had plaintiff continued as counsel for the estate he would have been confronted with a choice between his position upon the school board and as attorney for the estate. The fact is, however, that he was not afforded this opportunity, and speculation that he might have made a wrong choice cannot now form the basis of a declaration that his continued employment as attorney for the estate would have been invalid. Particularly is this so in the face of the unchallenged finding by the trial court \*166 that plaintiff acted 'at all times herein material \* \* \* with the highest degree of integrity consistent with the professional ethics of an attorney at law.'

Defendants next contend that their interference with plaintiff's relationship to the estate was privileged. Defendants predicate this assertion upon the claim that they occupied a confidential relationship with Mrs. Henderson by virtue of their long time service to the

Hendersons as tax consultants. In essence, defendants rely upon the privileges capsulized in Restatement, Torts ss 770<sup>1</sup> and 772,<sup>2</sup> or a combination thereof.

The basic reason supporting both of the mentioned privileges is the protection of public and private interests in freedom of communication, decent conduct, and professional as well as lay counsel. Such privileges, however, do not justify officious, self-serving, or presumptuous assumption of responsibility and interference with the rights of others. The burden of establishing the existence of such a privilege or privileges rests, as heretofore indicated, upon the one asserting justification thereby.

[9] We are satisfied, from our examination of the record, that defendants have not sustained their burden of proof. Suffice \*\*154 it to say the evidence supports the trial court's finding that defendants' interference was malicious, intentional and without justification.

[10] Defendants' fourth major contention revolves about the issue of damages. Plaintiff alleged, prayed for, and was awarded damages in an amount equal to the attorney's fee he would have received had he concluded the probate of \*167 the estate. The trial court deducted from the amount established by the evidence, by way of mitigation, the sum of \$1,000 upon the theory that plaintiff had refused compensation for the services he had performed prior to his termination.

Defendants contend that plaintiff pursued an improper measure of damages, asserting that the amount alleged, proved, and awarded represented the Gross fee plaintiff would have received, rather than the Net profit he would have realized had his services been continued. Thus, defendants argue, plaintiff failed in his proof upon the issue of damages in that he did not present evidence bearing upon the amount and value of the time, effort, and costs saved to him by reason of his nonperformance. In short, defendants contend that the measure of damages in the tort action of intentionally interfering with a business relationship should be the same measure as that utilized in a breach of contract action.

We cannot agree with defendants for the following reasons: (1) The action sounds in intentional tort rather than in breach of contract; (2) the tort here involved relates to the interruption of professional services, the uninterrupted performance of which comprehends many intangible values not wholly susceptible of proof; (3) the damage here claimed is the value of the professional business expectancy interfered with, prima facie proof of which is the reasonable value of such services; and (4) evidence bearing upon the amount and value of the time,

effort, and costs actually expended in performance of the services in issue is, and would be in most cases of like nature, as readily available to defendants as to plaintiff.

We conclude, therefore, that if defendants would offset the damages as claimed in the manner asserted, the burden rested upon them to affirmatively allege and offer proof upon such offset. Absent such allegations and proof, the trial court did not err in assessing damages based upon the evidence before it.

Lastly, defendants contend the trial court erred in the admission of certain evidence.

**\*168** The first assignment of error under this contention concerns evidence relating to purported interference by defendants with the probate of an estate by another attorney several years prior to the incident here involved. The offer of this evidence was prompted by defendants admitted reference to the incident in their conference with plaintiff on May 9, 1958. Defendants contend, however, that this evidence was not relevant to the issues of this case.

<sup>[11]</sup> It is the general rule, of course, that in civil actions evidence concerning similar acts, conduct, or representations is inadmissible for the purpose of proving the act charged in the complaint. However, there are exceptions to this rule. In *May v. Roberts*, 126 Wash. 645, 650, 219 P. 55, 57 (1923), we said:

\* \* \* The exceptions found in all or some of the authorities we think may be stated thus: (1) Proof of separate but similar acts or representations may be received for the purpose of tending to show the intention, motive, or knowledge of the defendant in connection with the act or

representation upon which the action is based; \* \* \*.

<sup>[12]</sup> Intent and knowledge being issues in the instant case, the trial court did not err in admitting the evidence in question.

The second assignment of error under this contention relates to the admission of testimony which defendants claim constitutes hearsay.

<sup>[13]</sup> We find no merit in this assignment for the reason stated in **\*\*155** *Primm v. Wockner*, 56 Wash.2d 215, 218, 351 P.2d 933 934 (1960):

\* \* \* This case was tried to the court. If hearsay was admitted, it was harmless error, inasmuch as the trial court's findings are supported by competent evidence. (Citing cases.)'

The judgment is affirmed.

OTT, C.J., and DONWORTH, WEAVER, and FINLEY, JJ., concur.

#### Parallel Citations

396 P.2d 148

#### Footnotes

<sup>1</sup> 'One who is charged with responsibility for the welfare of another is privileged purposely to cause him not to perform a contract, or enter into or continue a business relation, with a third person if the actor  
'(a) does not employ improper means and  
'(b) acts to protect the welfare of the other.' Restatement, Torts s 770.

<sup>2</sup> 'One is privileged purposely to cause another not to perform a contract, or enter into or continue a business relation, with a third person by giving honest advice to the other within the scope of a request for advice made by him, except that, if the actor is under a special duty to the third person with reference to the accuracy of the advice, he is subject to liability for breach of that duty.' Restatement, Torts s 772.

Calbom v. Knudtson, 65 Wash.2d 157 (1964)

396 P.2d 148

## **EXHIBIT D**

31 Wash.App. 86  
Court of Appeals of Washington, Division 2.

TOPLINE EQUIPMENT, INC., an Oregon  
corporation, Appellant,

v.

STAN WITTY LAND, INC., a Washington  
corporation; Stanley R. Witty and Diane Witty,  
husband and wife, Respondents and Cross  
appellants.

No. 3610-II. | Jan. 15, 1982.

Appeals were brought from a judgment of the Superior Court, Cowlitz County, Alan R. Hallowell, J., limiting seller's interest rate on balances owed it by buyer on three conditional sales contracts to 6% per annum, refusing to impose usury penalties, and awarding buyer \$40,000 for tortious contract interference. The Court of Appeals, Reed, C. J., held that: (1) statute providing that every loan "shall bear interest at the rate of 6% per annum when no different rate is agreed to in writing between the parties," applied, and thus trial court properly limited seller's interest rate to 6% per annum; (2) evidence supported conclusion that seller intentionally interfered with buyer's business relationship; and (3) trial court properly offset indebtedness of each party, under seller's claim and buyer's counterclaim, against the other, even though seller's claim was in nature of a secured claim.

Affirmed.

West Headnotes (15)

[11]

**Interest**

☞ Requisites and Validity

**Interest**

☞ Statement as to Rate in Contract

In order to satisfy writing requirement embodied in statute providing that every loan "shall bear interest at the rate of 6% per annum where no different rate is agreed to in writing between the parties," the parties must have a written agreement which expressly states an interest rate or, at the very least, contains sufficient terms so that the determination of the rate is merely a

matter of calculation. West's RCWA 19.52.010.

1 Cases that cite this headnote

[21]

**Interest**

☞ Computation of Rate in General

Specific rate of interest being charged by seller on conditional sales contracts was not disclosed in any of the contracts, and none of the contracts provided sufficient information, such as the original cash price of the items or the aggregate finance charges, from which the rate of interest could be computed, rather, the rate of interest prior to maturity was actually stated on all three contracts at "0" percent per annum; therefore, statute providing that every loan "shall bear interest at the rate of 6% per annum when no different rate is agreed to in writing between the parties," applied, and thus trial court, in suit by seller to recover balances owed on the contracts from buyer, properly limited seller's interest rate to 6%. West's RCWA 19.52.010.

1 Cases that cite this headnote

[31]

**Torts**

☞ Contracts

**Torts**

☞ Prospective Advantage, Contract or Relations; Expectancy

Basic elements which must be established to support a wrongful interference claim are: the existence of a valid contractual relationship or business expectancy; knowledge of the relationship or expectancy on the part of the interferor; intentional interference inducing or causing a breach or termination of the relationship or expectancy; and resulting damage to the property whose relationship or expectancy were disrupted.

5 Cases that cite this headnote

[4]

**Torts**

☛Business Relations or Economic Advantage,  
in General

**Torts**

☛Business Relations or Economic Advantage,  
in General

Evidence supported findings that a valid contractual relationship existed between buyer of equipment and auction operator, that seller of equipment knew of the auction agreement, and that cancellation by buyer of auction of equipment bought from seller was directly motivated by seller's threats of legal intervention unless buyer paid disputed unsecured claims on the equipment prior to the auction, thereby supporting conclusion that seller intentionally interfered with a business relationship of buyer's.

Cases that cite this headnote

[5]

**Torts**

☛Business Relations or Economic Advantage,  
in General

With respect to tortious interference with a business relationship, it is not necessary that the interferor understand the precise legal nature of relationship with which he is interfering.

Cases that cite this headnote

[6]

**Torts**

☛Defense, Justification or Privilege in General

With respect to tortious interference with a business relationship, interference is justified as a matter of law only where the interferor engaged in the exercise of an absolute right, equal or superior to the right which is invaded.

7 Cases that cite this headnote

[7]

**Torts**

☛Contracts in General

Even the existence of a secured debt does not necessarily provide a creditor with an absolute right to interfere with the contractual relationship that might compromise that debt.

4 Cases that cite this headnote

[8]

**Torts**

☛Contracts in General

Interference by seller of equipment in business relationship between buyer and operator of auction, with which buyer contracted to sell the equipment, was not justified as a matter of law.

Cases that cite this headnote

[9]

**Damages**

☛Weight and Sufficiency

A party need not prove damage with mathematical certainty where the fact of damage is well established.

2 Cases that cite this headnote

[10]

**Damages**

☛Weight and Sufficiency

Evidence of damage is sufficient if it affords a reasonable basis for estimating the loss and does not subject to trier of fact to mere speculation or conjecture.

1 Cases that cite this headnote



[11] **Damages**

☛Injuries to Property

Substantial evidence supported \$40,000 jury verdict in favor of buyer of equipment on counterclaim by buyer alleging that seller tortiously interfered with business relationship between buyer and operator of auction with which buyer contracted to sell equipment it had purchased from seller, because undisputed testimony demonstrated that approximate profit that would have been realized from the auction was well in excess of \$40,000, and that buyer suffered additional damages due to cancellation charges on the auction, further depreciation on the equipment, and losses on assets disposed of under distress.

Cases that cite this headnote

[12] **Set-Off and Counterclaim**

☛Secured Claims

Trial court, in suit by seller of equipment on balance owed it by buyer, and in which buyer counterclaimed for seller's alleged tortious interference with a business relationship between buyer and operator of auction, properly offset the indebtedness of each party, under seller's claim and buyer's counterclaim, against the other, even though seller's claim was in nature of a secured claim.

Cases that cite this headnote

[13] **Set-Off and Counterclaim**

☛Secured Claims

An unsecured claim may be asserted as a counterclaim against a secured claim.

Cases that cite this headnote

[14] **Appeal and Error**

☛Documents in General

Objection to seller to exhibit admitted at trial on balance allegedly owed by buyer to seller for purchase of equipment was not raised at trial and therefore was not entitled to review.

Cases that cite this headnote

[15] **Usury**

☛Persons Who May Take Advantage of Existence of Usury in General

**Usury**

☛Defense of Usury by Corporations

Buyer of equipment on conditional sales agreements was precluded from seeking application of usury penalties contained in statute, because the extension of credit embodied in the contracts constituted a loan to a corporation for the purpose of carrying on its trade or business, because buyer's obligations under the contracts were personally guaranteed by individual and his marital community, and it was undisputed that the interest rates incorporated in the contracts did not exceed 12% maximum permitted under second statute. West's RCWA 19.52.020, 19.52.030.

4 Cases that cite this headnote

**Attorneys and Law Firms**

**\*88 \*\*827** R. Dewitt Jones, Vancouver, for appellant.

D. Bruce Morgan, Seattle, for respondent.

**Opinion**

REED, Chief Judge.

This action arose out of an attempt by Topline Equipment, Inc. (Topline), an Oregon corporation, to recover the balances owed by Stan Witty Land, Inc. (Witty), a Washington corporation, on three conditional sales contracts. The central issue on appeal concerns the applicability to these three contracts of various interest and usury provisions in RCW 19.52. The trial court limited Topline's interest rate to 6 percent per annum pursuant to RCW 19.52.010, but refused to impose the usury penalties provided for in RCW 19.52.030. Topline also challenges a jury award of \$40,000 for tortious contract interference. Finding no error, we affirm the trial court in all respects.

Over a two-year period from 1974 to 1976, Witty entered into three separate conditional sales contracts with Topline for the purchase of logging equipment. These contracts were executed on forms supplied by CIT Finance Company (CIT), and provided Topline with an article IX security interest in the equipment being sold. Immediately upon execution, each of the three contracts, along with the security interests, was assigned to CIT subject to recourse against Topline.

The contracts called for monthly installments. Both parties concede that these payments embodied a "time price differential," **\*\*828**<sup>1</sup> which was equivalent to an annual interest **\*89** charge of 12 percent or less. However, neither the specific rate of interest, nor sufficient information from which such rate could be computed, was set forth in any of the agreements.

In July 1977, Witty entered into a memorandum agreement with Northwest Auction of Portland (Northwest) with the intention of auctioning off a substantial portion of its logging equipment, including the three pieces covered by the contracts. Witty and Northwest then contacted CIT in order to work out an arrangement for payoff of the contracts. CIT responded by submitting an agreement, to be signed by Northwest and Witty, providing that CIT would not oppose the auction of the secured equipment if the contracts were brought current and full payment guaranteed.

At this point, Topline, through its attorney, sent a letter to Northwest indicating that it would not permit the auction of the logging equipment unless Witty made provisions to pay not only the amounts secured by contract, but certain unsecured claims totaling \$15,000 as well. These claims were the subject of litigation then pending between the parties. There was also evidence that Mr. Gold, Topline's credit manager, told Witty that, if necessary, he would serve legal papers to stop the auction. Topline subsequently retreated from this hard line position and

informed Witty that it would not insist on payment of the disputed unsecured claims prior to the auction. However, Witty and Northwest maintained that the auction had already been canceled by the time they received this information.

After the cancellation of the auction, Witty became further delinquent under the contracts. Consequently, the contracts were reassigned to Topline and this lawsuit was initiated. Uncontroverted testimony established that the balance owing on the contracts at the time of trial was **\*90** \$41,215.95. Witty asserted the defense of usury and counterclaimed for damages based on Topline's intentional interference with the auction agreement between itself and Northwest.

The trial court withdrew the issue of usury from the jury but refused to award Topline the entire amount owing on the contracts. Instead, because the contracts failed to specify the exact rate of interest being charged, the court reduced the interest rate to 6 percent pursuant to RCW 19.52.010. This resulted in a balance of principal and interest of \$30,043.13.

Topline moved for a judgement notwithstanding the verdict on the issue of intentional business interference. The trial court denied this motion and proceeded to offset the contract balances found owing to Topline, along with the reasonable attorneys' fees and costs provided for in the contract, by the amount of the jury verdict in favor of Witty. The offset resulted in a net judgment for Witty of \$8,328.87. The court further held that Topline's security interests in the three items of equipment were extinguished as a result of the offsetting judgments.

On appeal Topline first contends that the trial court's recomputation of the contract balances at the statutory rate of 6 percent pursuant to RCW 19.52.010, constituted an impermissible modification of the terms of the conditional sales contracts. At all times pertinent hereto, RCW 19.52.010 provided that

(e)very loan or forbearance of money, goods, or thing in action shall bear interest at the rate of six percent per annum where no different rate is agreed to in writing between the parties.<sup>2</sup>

Topline maintains that this statute was inapplicable in the instant case because the **\*\*829** parties had written contracts **\*91** which incorporated interest rates of 12 percent.<sup>3</sup>

[1] [2] Topline's argument is unfounded. RCW 19.52.010 clearly limits interest charges to 6 percent per annum in the absence of a written agreement specifying a different rate. We believe that in order to satisfy the writing requirement embodied in the statute, the parties must have a written agreement which expressly states an interest rate or, at the very least, contains sufficient terms so that the determination of the rate is merely a matter of calculation. Cf. *Community Sav. & Loan Ass'n v. Fisher*, 409 S.W.2d 546 (Tex.1966); see also *Hazard v. Maxon*, 1 Wash.Terr. 584 (1878) (under the original statute governing interest rates only the legal rate of interest could be recovered on a contract which was so ambiguous as to render it uncertain whether more than such rate was stipulated for). Here, it is undisputed that the specific rate of interest being charged was not disclosed in any of the conditional sales contracts. Moreover, none of the contracts provided sufficient information, (i.e., the original cash price of the items or the aggregate finance charges) from which the rate of interest could be computed. To make the situation even more misleading, the rate of interest prior to maturity is actually stated on all three \*92 contracts at "0" percent per annum. Against this evidentiary background, the trial court's recomputation of the contracts pursuant to RCW 19.52.010 was appropriate.

[3] Topline next contends there was insufficient evidence to support Witty's claim of tortious business interference and that consequently the trial court erred in refusing to grant its motion for judgment n. o. v. The basic elements which must be established to support a wrongful interference claim are: (1) the existence of a valid contractual relationship or business expectancy; (2) knowledge of the relationship or expectancy on the part of the interferor; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resulting damage to the party whose relationship or expectancy was disrupted. *Calbom v. Knudtson*, 65 Wash.2d 157, 396 P.2d 148 (1964); *Singer Credit Corp. v. Mercer Masonry, Inc.*, 13 Wash.App. 877, 538 P.2d 544 (1975). Topline challenges the sufficiency of the evidence with respect to the first 3 of these elements. It is well established that on an appeal of this type the evidence, and all reasonable inferences therefrom, must be considered in the light most favorable to the prevailing party. *Bland v. Mentor*, 63 Wash.2d 150, 385 P.2d 727 (1963); *Singer Credit Corp. v. Mercer Masonry, Inc.*, supra.

[4] [5] Topline's allegations that there was insufficient evidence to establish the existence of a business relationship between Witty and Northwest which could provide a basis for the tortious interference claim is without merit. The record indicates that both parties had

signed a memorandum agreement to hold the auction and that Northwest had inspected and appraised the \*\*830 items to be sold. Additionally, the major items had been advertised and arrangements made with CIT to pay off the secured debts. This evidence clearly warranted the jury's conclusion that there was a valid business relationship between the parties.

Topline's argument that the evidence failed to establish that it had the requisite knowledge of the auction agreement to support a claim of tortious interference is also \*93 unfounded. It is not necessary that the interferor understand the precise legal nature of the relationship with which he is interfering.

Although knowledge of the existence of the business relationship in issue is an essential element in establishing liability for interference therewith, it is sufficient if the evidence reveals that the alleged interferor had knowledge of facts giving rise to the existence of the relationship. It is not necessary that the interferor understand the legal significance of such facts.

*Calbom*, 65 Wash.2d at 165, 396 P.2d 148. Here, the record reveals that Topline communicated with both Witty and Northwest on several occasions and was aware of some kind of business arrangement regarding the auction of the logging equipment.

We also find unpersuasive Topline's contention that there was insufficient evidence to establish that the claimed interference on its part actually induced the cancellation of the auction. Topline presented evidence that it had retracted its demands regarding payoff on the unsecured claims prior to Northwest's decision to cancel. However, Northwest denied this and testified that the cancellation was directly motivated by Topline's threats of legal intervention. When viewed in the light most favorable to Witty, this evidence supports the jury's finding that Topline's interference was responsible for the termination of the auction agreement.

[6] [7] [8] Topline additionally contends that any interference on its part was privileged, as a matter of law, because it had a legally protected interest in assuring that its unsecured claims would be satisfied before Witty sold all of its assets. We disagree. Interference is justified as a matter of law only when the interferor engages in the exercise of an absolute right, equal or superior to the right

which is invaded. *Brown v. Safeway Stores, Inc.*, 94 Wash.2d 359, 617 P.2d 704 (1980); *O'Brien v. Western Union Telegraph Co.*, 62 Wash. 598, 114 P. 441 (1911); *Singer Credit Corp. v. Mercer Masonry, Inc.*, supra; see also \*94 45 Am.Jur.2d Interference s 28 at 305 (1969). An absolute right exists only where a person has a definite legal right to act, without any qualification. See *O'Brien v. Western Union Telegraph Co.*, supra; *Ulan v. Lucas*, 18 Ariz.App. 129, 500 P.2d 914 (1972). Even the existence of a secured debt does not necessarily provide a creditor with an absolute right to interfere with a contractual relationship that might compromise that debt. *Meason v. Ralston Purina Co.*, 56 Ariz. 291, 107 P.2d 224 (1940); *Mitchell v. Aldrich*, 122 Vt. 19, 163 A.2d 833 (1960). Here, Topline's claim of privilege was based on its alleged right to protect unsecured and disputed debts that were even then being litigated. Moreover, Topline eventually recognized the tenuous nature of this claim and withdrew its demand that these disputed debts be paid prior to the auction. Under these facts Topline's interference was not justified as a matter of law and the issue was properly presented to the jury.

The remaining question is whether there was sufficient evidence to support the jury's factual determination that Topline's conduct was not privileged. An examination of the surrounding circumstances, including the disputed nature of the debts upon which the claim of privilege was based, and Topline's eventual change in position regarding payment, convinces us that there was substantial evidence in this regard.

[9] [10] [11] Topline further challenges the sufficiency of the evidence with respect to the \$40,000 damage award. This argument is also unfounded. A party need not prove damages with mathematical certainty where the fact of damage is well established. \*\*831 *Edwards Contracting Co. v. Port of Tacoma*, 83 Wash.2d 7, 514 P.2d 1381 (1973). Evidence of damage is sufficient if it affords a reasonable basis for estimating the loss and does not subject the trier of fact to mere speculation or conjecture. *Haner v. Quincy Farm Chemicals, Inc.*, 29 Wash.App. 93, 627 P.2d 571 (1981). Although there was no written appraisal in the present case, both Witty and Northwest provided undisputed testimony-some of it expert-regarding the items that would \*95 have been auctioned and the approximate profit that would have been realized. Both parties placed this well in excess of \$40,000. There was also evidence that Witty suffered additional damages due to cancellation charges on the auction, further depreciation on the equipment, and losses on assets disposed of under distress. Accordingly, we find that there was substantial evidence to support the \$40,000 jury verdict.

[12] [13] Topline next questions the propriety of the trial court's decision to offset the indebtedness of each party against the other. Topline contends that a judgment upon an express contract cannot be offset by a counterclaim sounding in tort. This contention is patently without merit. CR 13 expressly provides that a counterclaim may seek relief different in kind from that sought by the opposing party. Once it is determined that the counterclaim was properly joined in the action, there is no question as to the propriety of the offset. For almost a century the Washington courts have recognized that a counterclaim embodies the right of a defendant to have the claims of the parties counterbalanced in whole or in part, and to have judgment entered for any excess. *Sheafe v. Hastie*, 16 Wash. 563, 48 P. 246 (1897); see also CR 13(c); 20 Am.Jur.2d, Counterclaim, Recoupment, Etc. s 8 at 233 (1965). Topline additionally argues that offset was precluded by the secured nature of its claim. We disagree. The limited authority which exists on this issue indicates that an unsecured claim may be asserted as a counterclaim against a secured claim. *First Nat'l Bank v. Parker*, 28 Wash. 234, 68 P. 756 (1902); 80 C.J.S., Set-off and Counterclaim s 45 at 73 (1953).

[14] The final assignment of error asserted by Topline concerns the unduly prejudicial nature of one of the exhibits admitted at trial. This particular objection to the exhibit was not raised at trial and therefore is not entitled to review. *Makoviney v. Smith*, 21 Wash.App. 16, 584 P.2d 948 (1978).

[15] On cross appeal Witty contends that it was entitled to additional relief pursuant to usury penalties embodied in \*96 RCW 19.52.030. This statute provides for sanctions against a party who contracts for or receives a greater rate of interest "than is allowed by statute." Witty argues that the penalties were appropriate in the instant case because the interest being charged by Topline was greater than the 6 percent per annum allowed by RCW 19.52.010 in the absence of a written agreement specifying a higher rate. This argument was rejected by the trial court which held that the penalty provisions in RCW 19.52.030 applied only where the rate of interest charged was greater than the 12 percent maximum set forth in RCW 19.52.020.<sup>5</sup>

\*\*832 Our disposition of this matter is controlled by the following proviso to RCW 19.52.030:

(T)he debtor may not commence an action on the contract to apply the provisions of this section if a loan or forbearance is made to a corporation engaged in a trade or business for the purposes of

carrying on said trade or business unless there is also, in connection with such loan or forbearance, the creation of liability on the part of a natural person or his property for an amount in excess of the principal plus interest allowed pursuant to RCW 19.52.020.

(Emphasis added.) Here, the extension of credit embodied in the \*97 contracts constituted a loan to a corporation (i.e., Witty), for the purpose of carrying on its trade or business. See *National Bank of Commerce v. Thomsen*, 80 Wash.2d 406, 495 P.2d 332 (1972); see also n.3 *supra*. Witty's obligations under these contracts were personally guaranteed by Stanley Witty and his marital community. However, it is undisputed that the interest rates incorporated in these contracts did not exceed the 12 percent maximum permitted under RCW 19.52.020. Therefore, pursuant to the foregoing proviso, Witty is precluded from seeking application of the usury penalties contained in RCW 19.52.030.

Witty's other assignment of error concerning the trial

#### Footnotes

- <sup>1</sup> The term "time price differential" refers to a figure representing the difference between the cash price of an item and the total cost of purchasing that item on credit. See *National Bank of Commerce v. Thomsen*, 80 Wash.2d 406, 495 P.2d 332 (1972).
- <sup>2</sup> RCW 19.52.010 has subsequently been amended to allow interest to be charged at a rate of 12 percent per annum in the absence of a written agreement specifying a different rate. See RCW 19.52.010 (1981 amendment).
- <sup>3</sup> Topline has abandoned its unsuccessful trial argument that conditional sales contracts do not involve a loan or forbearance and are therefore immune to the interest and usury statutes set forth in RCW 19.52. It is true that older Washington cases adhered to the view that a conditional or credit sale did not constitute a loan. See *Hafer v. Spaeth*, 22 Wash.2d 378, 156 P.2d 408 (1945). However, at the time the present contracts were entered into the Washington courts had adopted the position that the assignment of a conditional sales contract to a finance company which enjoyed a close relationship with the seller indicated that the credit sale was actually a loan and required the application of the interest and usury statutes. *National Bank of Commerce v. Thomsen*, 80 Wash.2d 406, 495 P.2d 332 (1972). Here, Topline and CIT had an ongoing arrangement whereby CIT purchased Topline's installment paper. Moreover, the contracts were actually written on printed forms supplied by CIT. Under these circumstances, there is no question of the general applicability of RCW 19.52.  
In 1981 the legislature enacted RCW 19.52.120 which specifically prohibits the application of the provisions of RCW 19.52 to any conditional sales contract. However, this enactment does not aid Topline. A newly enacted statute which is substantive in nature and affects vested contractual rights is not given retroactive effect. *Kittilson v. Ford*, 23 Wash.App. 402, 595 P.2d 944 (1979).
- <sup>4</sup> At all times pertinent hereto, RCW 19.52.030 provided in relevant part:  
"(1) If a greater rate of interest than is allowed by statute shall be contracted for or received or reserved, the contract shall be usurious, but shall not, therefore, be void. If in any action on such contract proof be made that greater rate of interest has been directly or indirectly contracted for or taken or reserved, the creditor shall only be entitled to the principal, less the amount of interest accruing thereon at the rate contracted for; and if interest shall have been paid, the creditor shall only be entitled to the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest; and the debtor shall be entitled to costs and reasonable attorneys' fees plus the amount by which the amount he has paid under the contract exceeds the amount to which the creditor is entitled: ..."

court's award of attorneys' fees to Topline is unaccompanied by citation of authority and does not appear on its face to be meritorious. It is therefore not deserving of review. *State v. Young*, 89 Wash.2d 613, 574 P.2d 1171 (1978); *Ban-Co Inv. Co. v. Loveless*, 22 Wash.App. 122, 587 P.2d 567 (1978).

The final matter for our determination involves Topline's request for attorneys' fees on appeal. This request must be denied because of noncompliance with RAP 18.1(c). *Sollenberger v. Cranwell*, 26 Wash.App. 783, 614 P.2d 234 (1980).

For the reasons stated, we affirm.

PEARSON and PETRIE, JJ., concur.

#### Parallel Citations

639 P.2d 825

5 At all times relevant hereto, RCW 19.52.020 provided in pertinent part:

“Any rate of interest not exceeding twelve percent per annum agreed to in writing by the parties to the contract shall be legal, and no person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater interest, sum or value for the loan or forbearance of any money, goods or things in action than twelve percent per annum: ...”

End of Document

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SEP 25 2014

CHRISTOPHER D. RICH, Clerk  
By PATRICK McLAUGHLIN

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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

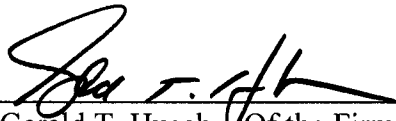
Case No. CV OC 1123344

**ZILOG, INC.'S OBJECTION AND  
MOTION TO STRIKE FOURTH  
AFFIDAVIT OF SARAH H. ARNETT**

COMES NOW Defendant Zilog, Inc. ("Zilog"), by and through its counsel of record, and hereby objects to and moves this Court for an Order striking the Fourth Affidavit of Sarah H. Arnett Providing Supplemental Authority in Further Support of Opposition to Zilog's Motion For Summary Judgment. This objection and motion is made in accordance with Idaho Rules of Civil Procedure 1 and 56(c) as well as Rule 8.1 of the Local Rules of the District Court and Magistrate Division for the Fourth Judicial District of the State of Idaho, and is supported by Zilog's accompanying memorandum brief, filed contemporaneously herewith.

DATED this 25th day of September, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch - Of the Firm  
Attorneys for Defendant Zilog, Inc.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September, 2014, I caused a true and correct copy of the foregoing **ZILOG, INC.'S OBJECTION AND MOTION TO STRIKE FOURTH AFFIDAVIT OF SARAH H. ARNETT** to be served by the method indicated below, and addressed to the following:

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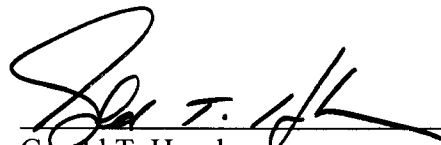
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NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 4:40

SEP 25 2014

CHRISTOPHER D. RICH, Clerk  
By PATRICK McLAUGHLIN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
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YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**MEMORANDUM IN SUPPORT OF  
ZILOG, INC.'S OBJECTION AND  
MOTION TO STRIKE FOURTH  
AFFIDAVIT OF SARAH H. ARNETT**

COMES NOW Defendant Zilog, Inc. ("Zilog"), by and through its counsel of record, and hereby submits this Memorandum in Support of Zilog, Inc.'s Objection and Motion to Strike the Fourth Affidavit of Sarah H. Arnett (Providing Supplemental Authority In Further Support of Opposition to Zilog's Motion For Summary Judgment) ("Arnett Affidavit"), because the Arnett Affidavit was filed in violation of Idaho Rules of Civil Procedure ("IRCP"), Rule 56(c) and the Local Rules of the District Court and Magistrate Division for the Fourth Judicial District of the State of Idaho ("Fourth District Local Rules"), Rule 8.1.

## I. ARGUMENT

In the summary judgment context, IRCP 56(c) mandates the timing of the parties moving papers in order to ensure that each party is given adequate opportunity to respond. *See e.g.* IRCP 56(c), provides in part:

The motion, affidavits and supporting brief shall be served at least twenty eight (28) days before the time fixed for the hearing. ***If the adverse party desires to serve opposing affidavits the party must do so at least 14 days prior to the date of the hearing. The adverse party shall also serve an answering brief at least 14 days prior to the date of the hearing.*** The moving party may thereafter serve a reply brief not less than 7 days before the date of the hearing.

...

***The court may alter or shorten the time periods and requirements of this rule for good cause shown, may continue the hearing, and may impose costs, attorney fees and sanctions against a party or the party's attorney, or both.***

IRCP 56(c) (emphasis added). Fourth District Local Rule 8.1 provides that every motion and response to a motion "must be accompanied by a separate memorandum, not to exceed twenty-five (25) pages, ***containing all the reasons and points and authorities relied upon by the moving party.***" (emphasis added).

To date, ASI has repeatedly ignored these procedural rules. ASI files over-length briefs without first obtaining Court approval, and it is seeking to continue Zilog's timely and properly noticed sanctions motion under the auspice that it would be prejudicial to maintain the presently noticed hearing on the motion for sanctions and the attendant briefing schedule. Yet, *at the same time*, ASI now seeks to supplement its briefing in opposition to Zilog's properly filed motion for summary judgment, on the night before this Court takes up the parties' motions, thereby violating IRCP 56(c) and Fourth District Local Rule 8.1. Zilog respectfully submits that ASI's continued disregard for the rules is prejudicial to Zilog, the other defendants, and this Court. ASI's actions deny Zilog adequate opportunity to respond. In addition, ASI's tactical maneuvering in seeking continuance of Zilog's sanctions motion—all the while finding time to file additional briefing on its response to summary judgment the eve before hearing—results in needless additional briefing and argument, unduly burdening Zilog and the Court. Zilog respectfully submits that two interrelated reasons exist for this Court to strike the Arnett Affidavit.

First, ASI, in submitting the late-filed Arnett Affidavit has failed to articulate the requisite “good cause.” IRCP 56(c) has not been altered or amended since 1987. In 1999, the Idaho Supreme Court squarely addressed the exact issue presented here—whether a district court should strike, and refuse to consider, an affidavit filed the day before the parties summary judgment hearing in the absence of demonstrated “good cause.” *See Sun Valley v. Rosholt, Robertson & Tucker*, 133 Idaho 1, 981 P.2d 236 (1999).

The Idaho Supreme Court held that a trial court commits reversible error for not striking such an affidavit, in the absence a showing of good cause for its filing. *Sun Valley v. Rosholt, Robertson & Tucker*, 133 Idaho 1, 981 P.2d 236 (1999). The procedural issue in *Sun*

*Valley* is nearly identical to the issue presented here. In that case, the defendant moved for summary judgment. Plaintiff timely responded. Thereafter, on the eve of the summary judgment hearing, the defendant sought to file, and have the district court consider, the late-filed affidavit of one of its attorneys. Plaintiff moved to strike the late-filed affidavit. In its written decision, the district judge denied plaintiff's motion to strike the affidavit, citing to IRCP 56(e), reasoning that plaintiff failed to demonstrate unfair prejudice resulting from the late service. The supreme court disagreed, holding that the district court abused its discretion in considering the late-filed affidavit. In its opinion, the court explained the interplay between IRCP 56(c) and (e), as well as the overriding purpose of the rules, as follows:

Rule 56(c) requires the moving party to serve the motion along with supporting brief and affidavits not less than twenty-eight days before the hearing. I.R.C.P. 56(c). The purpose is to give the opposing party an adequate and fair opportunity to support its case. *The rule requires the adverse party, if it chooses, to respond with an opposing brief and affidavits no less than fourteen days prior to the hearing. Id. Again, the purpose is to give the moving party an adequate opportunity to respond.* Finally, if the moving party chooses to reply, the rule permits the service of a reply brief no fewer than seven days before the hearing. *Id.* While the above language is mandatory, the trial court may shorten the time periods for good cause shown. *Id.*

*Sun Valley v. Rosholt, Roberson & Tucker*, 133 Idaho 1, 5, 981 P.2d 236, 240 (1999).

Moreover, the Court expressly rejected the argument that IRCP 56(e) is an exception to Rule 56(c), absent a showing of good cause, stating:

Rule 56(e) does give the trial court discretion to allow a party to oppose or supplement an affidavit by further affidavits, however, the time limitations set forth in Rule 56(c) still apply unless the court shortens the time for good cause shown. The problem here is that the Jensen affidavit was not a supplement to the earlier factual showing made in support of its motion, but rather presented new and different factual information relating to the judgmental immunity rule. Moreover, while the Jensen affidavit was also filed

to oppose information submitted by Sun Valley, the information contained in Jensen's affidavit was clearly known and available to RR&T prior to filing its motion and the record reflects no reason why the affidavit could not have been timely filed.

*Id.* at 6.

Here, ASI has not demonstrated or even attempted to demonstrate the requisite “good cause.” Rather, in filing the Arnett Affidavit one day before this Court hears the parties’ summary judgment motions, ASI asserts in paragraph 3 of the Arnett Affidavit that “Zilog is now erroneously asserting that Idaho Code § 48-806 of the Idaho Trade Secrets Act preempts any civil tort claim . . .” Arnett Affidavit at 1, ¶3. This assertion is undercut by ASI’s own acknowledgement in its opposition papers. ASI there admitted, in its briefing on American Semiconductor, Inc.’s Opposition to Zilog, Inc.’s Motion for Summary Judgment (“ASI Opposition Memorandum”), that “most of [Zilog’s] efforts on summary judgment [are directed] to arguing *all of ASI’s claims against Zilog are preempted under § 48-806 of the Idaho Trade Secrets Act.*” ASI Opposition Memorandum, filed September 12, 2014, p. 17 (emphasis added). For whatever reason, ASI chose not to address Zilog’s main argument on displacement or cite any authority in opposition to the authorities relied on by Zilog. Instead, it devoted all other arguments but two conclusory paragraphs of its already over length 39-page opposition.

Now, for the first time ASI submits non-binding case authority under the guise that Zilog raised the issue of displacement just recently. Arnett Affidavit ¶ 3. As in *Sun Valley*, “the information contained in [Arnett’s] affidavit was clearly known and available to [ASI] prior to filing its [opposition].” *Sun Valley v. Rosholt, Robertson and Tucker*, 133 Idaho 1, 6, 981 P.2d 236, 241 (1999). The decisions cited in the late-filed Arnett Affidavit are cases that were decided in 2005 and 2003, respectively (which, notably, pre-date the Idaho federal

district court decision cited by Zilog in its moving papers).<sup>1</sup> Moreover, these opinions were known or discoverable by ASI at the time required by IRCP 56(c) for ASI to file ASI's Opposition Memorandum two weeks ago. Similarly, the cases ASI asks this Court to consider in further support of its tortious interference with contract claims, are all decisions that were decided—and available—for ASI to discover and cite are cases decided in 1974 and 1964, respectively. Arnett Affidavit, Ex. C & D. ASI offers no reason that ASI could not have cited to these opinions in its opposition memorandum, let alone "good cause."

The purpose of the timing requirements of Rule 56(c) is to give the moving party an adequate opportunity to respond. By waiting to file the Arnett Affidavit until the day before the hearing robs Zilog of the opportunity to adequately respond to ASI's new arguments.

Separately, a second reason exists for this Court to strike the Arnett Affidavit. ASI's Opposition Memorandum (filed September 12, 2014) is already thirty-nine (39)-pages. The Arnett Affidavit contains yet another three (3) pages of additional argument. As with its previous filings, ASI has not sought prior approval from this Court to submit over-length briefing.

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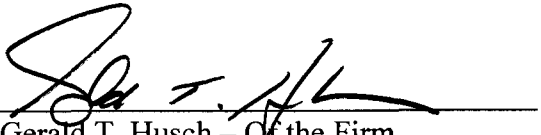
<sup>1</sup> ASI admits that the decisions from 7th Circuit and Illinois are nonbinding precedent. Rather, as explained in *Chatterbox, LLC v. Pulsar Ecoproducts, LLC*, 2007 WL 1388183 at \*4 (D. Idaho 2007) (relied on by Zilog in Zilog, Inc.'s Memorandum In Support of Summary Judgment, filed August 29, 2014), the purpose of the Uniform Trade Secrets Act is "to preserve a single tort cause of action under state law for misappropriation ... and thus to eliminate other tort causes of action founded on allegations of trade secret misappropriation," *Id.*, at \*5 (citation omitted). Where a plaintiff's common law claims "are based on the same nucleus of facts as its trade secrets claim . . . these should be dismissed as preempted by the Idaho Trade Secrets." *Id.*, at \*4.

## II. CONCLUSION

Based on the foregoing, Zilog respectfully requests that this Court enter an order striking the late-filed Arnett Affidavit in its entirety or otherwise disregard the Arnett Affidavit.

DATED this 25th day of September, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September, 2014, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF ZILOG, INC.'S OBJECTION AND MOTION TO STRIKE FOURTH AFFIDAVIT OF SARAH H. ARNETT** to be served by the method indicated below, and addressed to the following:

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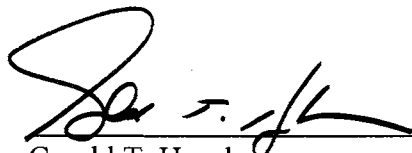
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NO. 952 FILED  
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OCT 06 2014

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DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**NOTICE OF SERVICE OF  
ZILOG, INC.'S SIXTH SET OF  
DISCOVERY REQUESTS TO  
PLAINTIFF**

NOTICE IS HEREBY GIVEN that on the 3rd day of October, 2014, a copy of  
**ZILOG, INC.'S NINTH SET OF DISCOVERY REQUESTS TO PLAINTIFF** and a copy of  
the **NOTICE OF SERVICE** were served by the method indicated below and addressed to the  
following at the address shown below:

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American Semiconductor, Inc.*

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☐ Hand Delivered  
☐ Overnight Mail  
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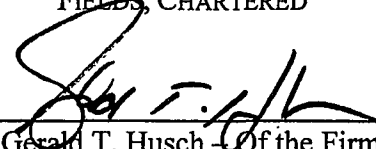
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Yearsley; and William Tiffany*

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Yearsley; and William Tiffany*

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MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch - Of the Firm  
Attorneys for Defendant Zilog, Inc.

OCT 14 2014

Ada County Clerk

A.M.

11/39

FILED

P.M.

OCT 14 2014

CHRISTOPHER D. RICH, Clerk  
By JAMIE MARTIN  
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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
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Plaintiff,

vs.

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 Delaware Corporation; DAVID ROBERTS,  
 GYLE YEARSLEY, WILLIAM TIFFANY  
 and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**MOTION IN LIMINE TO PRECLUDE  
 ASI FROM RAISING THE ISSUE OF  
 FAILURE TO ASSIGN INVENTIONS  
 BY ROBERTS, YEARSLEY AND  
 TIFFANY**

RELATED COUNTER ACTIONS

COME NOW Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany, by and through counsel, and seek the Court by way of this Motion in Limine to Preclude ASI from Raising the Issue of Failure to Assign Inventions by Robert, Yearsley and Tiffany. The Sage Defendants seek an order prohibiting American Semiconductor, Inc. ("ASI") from arguing, suggesting or presenting evidence that the Sage Defendants failed to assign inventions to ASI under the "Assignment of Inventions" clause of the Employee Confidentiality Agreement ("ECA").

The law is clear that "[a] plaintiff who wishes to recover for a breach of contract bears the burden of proving the existence of a contract and fact of its breach...." *Melaleuca, Inc. v. Foeller*, 155 Idaho 920, 318 P.3d 910, 914 (2014) (internal quotation omitted). In this present matter, ASI claims that Roberst, Yearsley and Tiffany breached their ECA by violating the "Assignment of Inventions" clause because they "failed to assign any and all 'Inventions.'" Second Amend Comp. ¶ 67. However, ASI has never identified an invention created by Roberts, Yearsley, and Tiffany that should have been assigned to ASI.

The specific wording of the ECA demonstrates that a breach has not occurred. The "Assignment of Inventions" term of the ECA states:

Employee agrees that all Inventions that (i) are developed using equipment, supplies, facilities or trade secrets of Employer; (2) [sic] result from work performed by Employee for Employer; or (iii) relate to Employer's business or current or anticipated research and development, will be the sole and exclusive property of Employer, and **Employee hereby irrevocably assigns all rights in such Inventions to Employer. Employee will sign any assignment or other documents as requested by Employer to evidence such assignment during or after the term of his/her employment** by Employer, and will otherwise assist Employer in protecting it [sic] rights in such Inventions as requested by Employer.

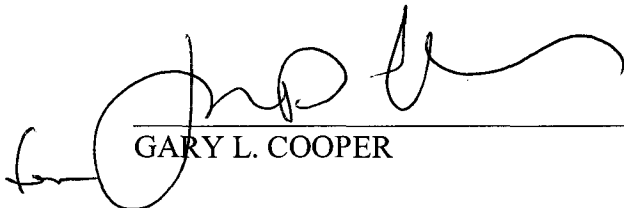
Depo Ex 240, ¶ 4; Depo Exs 293 and 294. This provision is a pre-invention assignment clause which

itself assigns all inventions created by Roberts, Yearsley or Tiffany to ASI. No "Invention" has been identified by ASI that could have or should have been assigned to ASI. There is no breach because the Sage Defendants have never been provided with and have never refused to execute "any assignment or other documents" as requested by ASI. Wilson Depo 56:15-57:3, Depo Ex 240, ¶ 4. This fact was not contested throughout the summary judgment proceedings. Thus, ASI has not satisfied the burden of demonstrating a breach of the ECA because of a failure to assign and invention or to singe a document evidencing such an assignment.

Because ASI has not identified any invention that could have or should have been assigned to ASI or provided Roberts, Yearsley and Tiffany with a document to execute and memorialize an assignment of invention as provided by the ECA, any evidence of a failure to assign would be more prejudicial than probative. If such evidence is raised or admitted it will only serve to create the impression of guilt on other causes of action that will be before a jury. Thus, ASI should be prevented from mentioning the failure to assign inventions claim or presenting any evidence of a failure to assign. ASI has not satisfied its burden of proving a breach of the "Assignment of Inventions" clause and any suggestion that his clause has been breached would be more prejudicial than probative.

DATED this 10<sup>th</sup> day of October, 2014.

COOPER & LARSEN

  
\_\_\_\_\_  
GARY L. COOPER

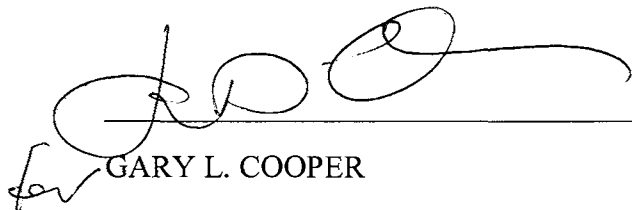
**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of October, 2014, I served a true and correct copy of the foregoing to:

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\_\_\_\_\_  
GARY L. COOPER

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OCT 22 2014

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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**MOTION IN LIMINE TO PRECLUDE  
ASI FROM RAISING THE ISSUE OF  
IMPROPER USE OR  
MISAPPROPRIATION OF  
CONFIDENTIAL INFORMATION BY  
ROBERTS, YEARSLEY AND TIFFANY**

RELATED COUNTER ACTIONS

MOTION IN LIMINE TO PRECLUDE ASI FROM RAISING ISSUE OF IMPROPER USE OR MISAPPROPRIATION OF  
CONFIDENTIAL INFORMATION - PAGE 1

001177



COME NOW Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany, by and through counsel, and seek the Court by way of this Motion in Limine to Preclude ASI from Raising the Issue of Improper Disclosure or Misappropriation of Confidential Information by Robert, Yearsley and Tiffany. The Sage Defendants seek an order prohibiting American Semiconductor, Inc. ("ASI") from arguing, suggesting or presenting evidence that the Sage Defendants violated the Employee Confidentiality Agreement ("ECA") by improperly disclosing or misappropriating ASI's confidential information.

The law is clear that "[a] plaintiff who wishes to recover for a breach of contract bears the burden of proving the existence of a contract and fact of its breach...." *Melaleuca, Inc. v. Foeller*, 155 Idaho 920, 318 P.3d 910, 914 (2014) (internal quotation omitted). In the present matter, ASI's Second Amended Complaint contains an allegation that Roberst, Yearsley and Tiffany "utilized" ASI's "contractual 'Secrets'" as defined in the ECA when providing services to ASI. Second Amend Comp. ¶ 39. The only cause of action in the Second Amended Complaint that relies on this allegation is the sixth cause of action that alleges a violation of the Idaho Trade Secret Act. This cause of action was voluntarily dismissed by ASI. *See* Motion for Voluntary Dismissal, Dated 8/19/14.

As well, at a hearing held on September 26, 2014, counsel for ASI represented to the Court that ASI was not making any claim regarding the improper use of ASI's confidential information. ASI's Counsel specifically stated:


Simply for the avoidance of doubt, ASI does not claim or assert any claims based on misappropriation of confidential information as opposed to trade secrets. That is also not part of the claims at this point.

Transcript of Hearing Held 9/16/2014 at 71:4-8. The Court and opposing parties are entitled to rely on a statement in open court by Counsel as being a correct statement of fact or law. IRPC 3.3.

Because ASI has openly represented on the record that it does not claim and is not asserting any claims based on the improper use of ASI's confidential information, any evidence of a improper use of ASI's confidential information would be more prejudicial than probative. If such evidence is raised or admitted it will only serve to create the impression of guilt on other causes of action that will be before a jury. Thus, ASI should be prevented from mentioning any improper use or misappropriation of ASI's confidential information or presenting any evidence of a such a claim. ASI has not satisfied its burden of proving a breach of the ECA by improper use or misappropriation of ASI's confidential information and any suggestion that ECA has been breached in such a way would be more prejudicial than probative.

DATED this 20<sup>th</sup> day of October, 2014.

COOPER & LARSEN

  
\_\_\_\_\_  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of October, 2014, I served a true and correct copy of the foregoing to:

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GARY L. COOPER

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OCT 24 2014

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*Counsel for Counterclaimants*

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AMERICAN SEMICONDUCTOR, INC.,  
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 GYLE YEARSLEY, WILLIAM TIFFANY  
 and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**SAGE DEFENDANTS' MOTION TO  
 RECONSIDER**

RELATED COUNTER ACTIONS

SAGE DEFENDANTS' MOTION TO RECONSIDER - PAGE 1

001181

COME NOW Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany, by and through counsel, and seek the Court by way of this Motion to Reconsider to reconsider the Court's decision denying summary judgment on claims for unjust enrichment and breach of contract. This motion is supported by the memorandum filed herewith.

DATED this 24 day of October, 2014.

COOPER & LARSEN

  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24 day of October, 2014, I served a true and correct copy of the foregoing to:

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GARY L. COOPER

*Handwritten: 17/11/14 10:29/14*

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 A.M. \_\_\_\_\_ P.M. 4

OCT 24 2014

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*Counsel for Counterclaimants*

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 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
 an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
 Idaho Corporation; ZILOG, INC., a  
 Delaware Corporation; DAVID ROBERTS,  
 GYLE YEARSLEY, WILLIAM TIFFANY  
 and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

SAGE DEFENDANTS' MEMORANDUM  
 IN SUPPORT OF MOTION FOR  
 RECONSIDERATION

RELATED COUNTER ACTIONS

On Friday, September 26, 2014, the Sage Defendants argued their Motion for Summary Judgment against ASI and this Court ruled from the bench. This Motion seeks reconsideration on two discrete issues, namely whether any claim of unjust enrichment survives summary judgment and whether the breach of contract claim based on breach of the assignment of inventions clause should survive summary judgment.

#### **EIGHTH CAUSE OF ACTION – UNJUST ENRICHMENT**

In its ruling from the bench, this Court found that because ASI had moved, and the Court granted voluntary dismissal of ASI's Sixth Cause of Action for trade secret violations, the Eighth Cause of Action "insofar as it relates to the Sage defendants receipt of a benefit from utilizing ASI's trade secrets" should be and was dismissed. (Reporter's Transcript, 9/26/14 P.M. Proceeding, p. 160: 14 - 23) That ruling is clear. What is not clear is what is left and the purpose of this Motion for Reconsideration is to address what is left to better focus the claims that remain for trial.

***A. Any remaining claims for unjust enrichment against the individual defendants are not actionable under the theory of unjust enrichment because a contractual remedy exists in favor of ASI for breach of the ECA executed by each individual defendants.***

The Eighth Cause of Action for Unjust Enrichment was alleged against all defendants, namely: "against the Individual Defendants, Sage and Zilog." In paragraph 104 it was alleged that "The Individual Defendants have received a benefit from American Semiconductor, in the form of salary payments and benefits while the Individual Defendants formed and operated Sage."

The salary payments and benefits paid by ASI to the individual Sage Defendants are the subject of written agreements between the two. (Deposition Exhibits 12, 22, 23, 24, 25, 26) The Idaho Supreme Court addressed this very issue in *Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 558, 165 P.3d 261, 272 (2007) where it stated as follows:

The doctrine of unjust enrichment is not permissible where there is an enforceable express contract between the parties which covers the same subject matter. *Wilhelm v. Johnston*, 136 Idaho 145, 152, 30 P.3d 300, 307 (Ct.App.2001) (citing *DBSI/TRI v. v. Bender*, 130 Idaho 796, 805, 948 P.2d 151, 160 (1997)). Equity does not intervene when an express contract prescribes the right to compensation. *Shacocass, Inc. v. Arrington Constr. Co.*, 116 Idaho 460, 464, 776 P.2d 469, 473 (Ct.App.1989); see *Wolford v. Tankersley*, 107 Idaho 1062, 1064, 695 P.2d 1201, 1203 (1984).

See also *Buku Properties, LLC v. Clark*, 153 Idaho 828, 834, 291 P.3d 1027, 1033 (2012), reh'g denied (Jan. 23, 2013):

Generally, "[e]quitable claims will not be considered when an adequate legal remedy is available." *Iron Eagle Dev., LLC v. Quality Design Sys., Inc.*, 138 Idaho 487, 492, 65 P.3d 509, 514 (2003). Thus, when "parties enter into an express contract, a claim based in equity is not allowed because the express contract precludes enforcement of equitable claims." *Id.*

The employment letters and the ECA signed by each individual Sage Defendant deal specifically with compensation and the right to work for third parties. In fact this is one of the bases for ASI's claims in the First Cause of Action (breach of contract), Second Cause of Action (breach of fiduciary duty/duty of loyalty) and Third Cause of Action (breach of the implied covenant of good faith and fair dealing)

The unjust enrichment claim against the individual Sage Defendants based on the allegations in Paragraph 104 of the Second Amended Complaint to the effect that they "received a benefit from American Semiconductor, in the form of salary payments and benefits while the individual Defendants formed and operated Sage" should be dismissed because there is an express contract covering this issue and ASI has an adequate remedy at law.



**B. *There is no non-Trade Secret related claim for unjust enrichment alleged against Sage in the Second Amended Complaint and there are no unjust enrichment claims against the individual Sage Defendants which are not either precluded by the available legal remedy or the Trade Secret pre-emption.***

At the oral argument on the Motion for Summary Judgment filed by the Sage Defendants, counsel for ASI argued that the claim against Sage was broader than just a claim for misappropriation of trade secret, namely that "among the benefits that Sage, in particular, appreciated here is the ability to render design, engineering and related services through the use of these individuals who are otherwise precluded from doing so." (Reporter's Transcript, 9/26/14 P.M. Proceeding, pp. 151: 3 - 19; 153: 2 - 11) This was an entirely new claim from what was alleged in the Second Amended Complaint. This was anticipated by the Sage Defendants and addressed in its Reply Memorandum at pp. 12 - 13. It was also addressed by counsel for the Sage Defendants in oral argument. (Reporter's Transcript, 9/26/14 P.M. Proceeding, pp. 144: 18 - 145: 4)

It is not permissible for ASI to use the motion for summary judgment proceeding to expand its pleadings and insert new issues into the case that are not contained in the. In *Esser Elec. v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 919, 188 P.3d 854, 861 (2008) the Idaho Supreme Court stated:

The trial court must examine the pleadings to determine what issues are raised in the case. The only issues considered on summary judgment are those raised by the pleadings. *Vanvooren v. Astin*, 141 Idaho 440, 111 P.3d 125 (2005); *Lexington Heights Dev., LLC v. Crandlemire*, 140 Idaho 276, 92 P.3d 526 (2004); *Beco Constr. Co. v. City of Idaho Falls*, 124 Idaho 859, 865 P.2d 950 (1993); *Gardner v. Evans*, 110 Idaho 925, 719 P.2d 1185 (1986).

See also *Porter v. Bassett*, 146 Idaho 399, 403, 195 P.3d 1212, 1216 (2008).

However, this Court, in its ruling on the Motion for Summary Judgment addressed to ASI's

Eighth Cause of Action, permitted ASI to avoid summary judgment by holding that the claim based on ASI's argument "that it conferred a benefit upon the Sage defendants in the individual ASI employees who comprise Sage performed work for Zilog" survived summary judgment. (Reporter's Transcript, 9/26/14 P.M. Proceeding, pp. 161: 17 - 25) This is not a claim which was raised by the pleadings in ASI's Eighth Cause of Action.

Based on the foregoing, this Court should grant the Motion for Summary Judgment filed by the Sage Defendants directed against ASI's Eighth Cause of Action in its entirety.

### **FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

There are two claims encompassed within ASI's First Cause of Action against the Individual Sage Defendants, namely: (1) Breach of the non-competition provision in the ECA (Second Amended Complaint, p. 10, paragraph 62); and (2) Breach of the assignment of Inventions provision in the ECA. (Second Amended Complaint, p. 10, paragraphs 63 and 66) The Sage Defendants moved for Summary Judgment as to both claims. (See Sage Defendants' opening Memorandum, pp. 9 - 18) This Court denied ASI's Motion for Partial Summary Judgment where it attempted to obtain summary judgment that the individual Sage Defendants violated the non-competition provision in their ECA. (Reporter's Transcript, 9/26/14 A.M. Proceeding, pp. 122: 16 – 127: 7) However, this Court did not rule on the portion of the Motion for Summary Judgment filed by the Sage Defendants addressed to the claim that the individual Sage Defendants breached the assignment of inventions provision of the ECA.

The "Assignment of Inventions" term of the ECA states:

Employee agrees that all Inventions that (i) are developed using equipment, supplies, facilities or trade secrets of Employer; (2) [sic] result from work performed by Employee for Employer; or (iii) relate to Employer's business or current or anticipated research and development, will be the sole and exclusive property of

Employer, and Employee hereby irrevocably assigns all rights in such Inventions to Employer. Employee will sign any assignment or other documents as requested by Employer to evidence such assignment during or after the term of his/her employment by Employer, and will otherwise assist Employer in protecting it [sic] rights in such Inventions as requested by Employer.

Depo Ex 240, ¶ 4; Depo Exs 293 and 294.

ASI has never identified what "Invention" was supposed to be assigned. There is no evidence in the record that Sage or the Sage Defendants developed any "Inventions" at Zilog or that they acquired any rights in "Inventions" that could be assigned to ASI. ASI conceded that there were no ASI trade secrets involved in the work performed for Zilog. Furthermore, the ECA provides that the employee must sign "any assignment or other documents as requested by" ASI "to evidence such assignment..." Depo Exs 12, 25 and 26 at ¶ 4. There cannot be a breach of the assignment clause of the ECA because the Sage Defendants have never been provided with, and have never refused to execute, "any assignment or other documents" as requested by ASI and ASI has not identified an invention that was supposed to be assigned. Wilson Depo 56:15-57:3.

Accordingly, the Motion for Summary Judgment directed against ASI's claim that the individual Sage Defendants breached their ECA contracts by failing to assign inventions should be granted.

DATED this 31 day of October, 2014.

COOPER & LARSEN

  
GARY L. COOPER

OCT 28 2014

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By KYLE MEREDITH  
DEPUTY

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GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**MEMORANDUM IN SUPPORT OF  
MOTION IN LIMINE OF HOFFMAN'S  
EXPERT OPINIONS**

RELATED COUNTER ACTIONS

This Motion in Limine is directed at the expert opinions of ASI's expert Richard S. Hoffman. His report is attached as Exhibit "A" to the Motion in Limine of Hoffman's Expert Opinions filed concurrently with this Memorandum.

### STATEMENT OF FACTS

Mr. Hoffman is a Certified Public Accountant, accredited in business valuation and has additional training in the areas of valuation, litigation and lost profit calculations. (Hoffman CV attached to report). Mr. Hoffman has been engaged by ASI to calculate the amount of lost profits that ASI suffered as a result of Zilog's engagement of Sage instead of ASI. (Hoffman Report, p. 4). He has calculated lost profits in the following categories:

- 74 1. Profits ASI would have earned from services Sage actually performed and for which Zilog has  
75 paid.
- 76 2. Profits ASI would have earned from services Sage actually performed and for which Zilog has not  
77 yet paid.
- 78 3. Profits ASI would have earned from services that were requested, authorized, and funded by  
79 Zilog but were not performed by Sage as a result of events on and after September 22, 2011.
- 80 4. Profits ASI would have earned on additional services that would have been reasonably required  
81 (per Mr. Holland, ASI's technical expert) to bring the project at issue to "Tape-Out."

Mr. Hoffman never distinguishes between "gross profit" and "net profit" in his report. To calculate "lost profits" Mr. Hoffman begins with what ASI would have bid the Zilog job using the individual Sage Defendants as employees. (Exhibit 325 attached to this Memorandum). His calculation of "profit" is explained as follows:

100 In this matter, I have measured the Lost Profits suffered by ASI by first calculating the amount of  
101 revenue that would have been generated by ASI, but was not generated because of Sage ("Lost  
102 Revenue"). Next I calculated the expenses that would have been incurred, but were not, in order to  
103 generate the Lost Revenue ("Incremental Costs"), and I subtracted those expenses from Lost Revenue. I  
104 also considered any adjustments that may be necessary to account for other salient events and/or other  
105 risks that have not been previously considered in the calculation ("Intervening Factors").

Mr. Hoffman explains that the "incremental costs" he deducted from total revenue does not include all the overhead costs of ASI:

127 As shown on Exhibit 325, the main cost ASI incurs when generating revenue is the cost of the employee.  
128 With respect to categories 1 and 2, the Individual Defendants were still working at ASI and therefore  
129 receiving a salary. Inasmuch as the Zilog project would have been part of their normal duties, these

130 costs have already been paid, and are therefore not incremental. The damage period covered by  
131 categories 3 and 4, however, occurs after the Individual Defendants were dismissed from ASI. As shown  
132 on Schedules 4 and 5, I have subtracted the expected payroll costs from my calculation of the Lost  
133 Revenues measured in categories 3 and 4.

Gross Profit is generally defined as the excess of price received over price paid for goods before deductions are made for cost of operation. Black's Law Dictionary, p. 832 (4th ed. 1968). On the other hand, Net Profit is what remains as clear gain of corporations, after deducting from its income all expenses incurred and losses sustained in the conduct and prosecution of its business. Black's Law Dictionary, p. 1192 (4<sup>th</sup> ed. 1968). It is the mathematical result of revenues minus the cost of goods sold and all expenses and losses. Mr. Hoffman's calculation is really not a calculation of lost gross profits or lost net profits for ASI. According to Mr. Hoffman the ASI's projected total lost revenue if it had received the Zilog job was \$1,182,448 and the lost profit was \$1,025,087. In other words this project would have resulted in 87% profit for ASI. This result is not the product of valid reasoning or methodology to determine lost profits under Idaho law.

To demonstrate how clearly the result is overstated and unreasonable, it is well to understand that ASI has never in the recent past exceeded \$400,000 in net profits from its operation. Its income statement for 2009 - 2012 reveals the following<sup>1</sup>:

	2012	2011	2010	2009
Net Revenue	\$3,095,341	\$4,321,533	\$3,940,766	\$1,708,572
Gross Profit	\$1,078,760	\$1,055,187	\$1,263,566	(\$989)
Net Profit	\$63,911 <sup>2</sup>	\$100,146 <sup>3</sup>	\$390,588 <sup>4</sup>	(\$820,195)

However, on this one project of approximately \$1.2M, ASI would have had a profit margin

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<sup>1</sup>Deposition Exhibit 338

<sup>2</sup>Net profit is about 2% of net revenue (See deposition of L. Hackler, pp. 107 - 108)

<sup>3</sup>Net profit is about 2% of net revenue (See deposition of L. Hackler, pp. 107 - 108)

<sup>4</sup>Net profit is about 10% of net revenue (See deposition of L. Hackler, pp. 107 - 108)

of 87% and boosted its profits 10 fold for 2011 from about \$100,000 to \$1,125,00, according to Hoffman's analysis. Something is obviously wrong with the methodology used by Mr. Hoffman.

What is wrong is that Mr. Hoffman did not deduct labor costs to perform the work in most of his calculations and he did not deduct the cost of the tools to perform the work in most of his calculations. Nor did he deduct the General Administrative expenses which, as ASI's CFO, Lorelli Hackler explained included the following overhead costs:

71

12 Q. Then the next line item is "G&A." Did you  
13 supply the percentage of 32.13 percent?

14 A. Correct.

15 Q. What is included in the 32.13 percent?

16 A. General administrative expenses.

17 Q. Okay. But can you specify?

18 A. Well, it's a long list. So, it's anything  
19 that doesn't become a cost of goods sold item. If  
20 you're looking at an income statement you will see "cost  
21 of goods sold" and then you'll see "expenses" and that's  
22 what G&A is. So, it's a percentage of your total costs.

(L. Hackler deposition, p. 71:12-22).

In its own calculation of what ASI would have charged to do the Zilog work which Sage performed, ASI only anticipated a profit margin of 17%. (L. Hackler deposition, pp. 78:24 - 81:5)

When asked, the ASI CFO, Lorelli Hackler, agreed that everything above the line item for 17% profit in the bid proposal was a "hard cost":

80

24 Q. Everything above the fixed fee is considered  
25 to be hard cost; correct?

81

1 A. Correct.

(L. Hackler deposition, pp. 80 - 81).

However, Mr. Hoffman treats everything in the bid as an “incremental cost” and does not deduct it to get to profit. As a consequence, instead of a profit in the range of 10% to 20%, Mr. Hoffman’s analysis results in a profit of 87% which he claims is more probable than not the profit ASI lost when it did not get the Zilog job.

## **DISCUSSION OF LAW AND ARGUMENT**

### **A. EXPERT OPINION BASED ON FLAWED REASONING AND METHODOLOGY SHOULD NOT BE ADMITTED**

The admissibility of evidence, particularly expert testimony rests in the sound discretion of the Court. *Clair v. Clair*, 153 Idaho 278, 283, 281 P.3d 115, 120 (2012) (The trial court has broad discretion to admit or exclude evidence, and to determine whether a witness is qualified as an expert.) At least one of the factors that a Court must consider is whether the testimony will be of benefit to the jury and “whether the probative value of the evidence is outweighed by its prejudicial effect..” *Ryan v. Beisner*, 123 Idaho 42, 47, 844 P.2d 24, 29 (Ct. App. 1992) “The calculation of lost profits must be based upon evidence which leads to a reasoned conclusion.” *Young v. Scott*, 108 Idaho 506, 510, 700 P.2d 128, 132 (Ct. App. 1985) (citing *Nora v. Safeco Insurance Co.*, 99 Idaho 60, 577 P.2d 347 (1978)).

Expert testimony should only be admitted if the expert’s reasoning and methodology is valid:

The admissibility of an expert's opinion “depends on the validity of the expert's reasoning and methodology.” *Coombs v. Curnow*, 148 Idaho 129, 140, 219 P.3d 453, 464 (2009). Saint Alphonsus did not object to Mr. Budge's reasoning and methodology, and therefore any objection to his reasoning and methodology was waived. *Saint Alphonsus Diversified Care*, 148 Idaho at 494, 224 P.3d at 1083; *Kirk v. Ford Motor Co.*, 141 Idaho 697, 701–02, 116 P.3d 27, 31–32 (2005). “Once an expert's opinion is admitted, it is up to the trier of fact to weigh the opinion against any conflicting testimony. The jury's weighing of conflicting, admitted opinions will not be second-guessed on appeal.” *Coombs*, 148 Idaho at 137, 219 P.3d at 461 (citation omitted).



*Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP*, 334 P.3d 780, 789 (Idaho 2014).

**B. THE PROPER MEASURE OF DAMAGES IN THIS CASE IS LOSS OF NET PROFITS**

In *Gen. Auto Parts Co. v. Genuine Parts Co.*, 132 Idaho 849, 854-55, 979 P.2d 1207, 1212-13 (1999), the Idaho Supreme made it clear that the proper measure of damages for breach of a duty not to compete is “lost profits”:

The question of the proper measure of damages is a question of law which is reviewed *de novo*. See *Weitzel v. Jukich*, 73 Idaho 301, 305-07, 251 P.2d 542, 544-45 (1952). While this Court has never addressed the question of the proper measure of damages for breach of an exclusive distributorship agreement, it has determined the proper measure of damages in actions involving a breach of a covenant not to compete. In the covenant not to compete cases, the proper measure of damages is the impairment of goodwill and the plaintiff's lost profits. *Vancil v. Anderson*, 71 Idaho 95, 104, 227 P.2d 74, 79 (1951); *Dunn v. Ward*, 105 Idaho 354, 356, 670 P.2d 59, 61 (Ct.App.1983). See also *Ryska v. Anderson*, 70 Idaho 207, 213-14, 214 P.2d 874, 877-78 (1950). This Court has recognized that the loss of goodwill and loss of profits are distinct types of damages. See *Ryska*, 70 Idaho at 212, 214 P.2d at 876; *Dunn*, 105 Idaho at 356, 670 P.2d at 61.

Although the Idaho Supreme Court did not say “net profits” in its *Genuine Parts* decision, other decisions have made it clear that it is “net profits” and not “gross profits” or some other definition of “profits” which is the correct measure of damages. In the recent Idaho Supreme Court decision in *Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP*, 334 P.3d 780, 789 (Idaho 2014) it was clear that the measure of damages<sup>5</sup> is lost “net profits”:

With respect to MRI Mobile, Saint Alphonsus argues that the use of IMI's financial data from its Meridian facility to calculate MRI Mobile's damages is a methodology held insufficient in *Trilogy Network Systems, Inc. v. Johnson*, 144 Idaho 844, 172 P.3d 1119 (2007). In *Trilogy*, this Court stated, “The measure of damages for the

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<sup>5</sup>In fact the opinion notes that the jury was instructed that the damages consisted of “net profits” as follows: “the amount of money that will reasonably and fairly compensate MRIA, MRI Center, and MRI Mobile for the net profits lost that the evidence proves to have been a natural and proximate result of Saint Alphonsus's breach of contract”. *Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP*, 334 P.3d 780, 791 (Idaho 2014).

breach of an anti-competition clause is the amount that the plaintiff lost by reason of the breach, not the amount of profits made by the defendant.” *Id.* at 846, 172 P.3d at 1121. However, the defendant in *Trilogy* was a former employee of the plaintiff, who had agreed not to do business with the plaintiff’s customers for a period of one year. *Id.* The defendant violated that agreement by outbidding the plaintiff to obtain a contract with one of the plaintiff’s customers. *Id.* In that case, the competition that violated the agreement not to compete was between two existing businesses. In this case, the wrongful conduct was in the nature of usurping a partnership opportunity to open a facility in Meridian, which then competed against MRI Mobile. ***In this circumstance, the measure of lost profits would be the net profits of the facility.***

(*Emphasis* supplied).

It has long been clear in other decisions of the Idaho Supreme Court that lost profits necessarily includes deduction of overhead expenses to get to net profits in tortious interference cases, otherwise the damages are uncertain and mere conjecture and speculation:

It is well settled in Idaho law that in cases of ‘tortious interference with an established business that damages for loss of anticipated earnings or profits must be shown with reasonable certainty.’ *McLean v. City of Spirit Lake*, 91 Idaho 779, 783, 430 P.2d 670, 674 (1967). Accord, e. g., *McOmber v. Nuckols*, 82 Idaho 280, 353 P.2d 398 (1960); *Coast Transport, Inc. v. Stone*, 79 Idaho 257, 313 P.2d 1073 (1957). The purpose of the ‘reasonable certainty’ rule is to avoid making compensatory damages awards for lost profits which are fabricated or based on mere conjecture or speculation. See, e. g., *Harrington v. Hadden*, 69 Idaho 22, 202 P.2d 236 (1949). In regard to whether lost profits are established with the requisite ‘reasonable certainty,’ this court has enunciated the rule that ***a mere estimate of net profit as a percentage of gross receipts, without evidence of overhead expenses or other costs of producing income, is too uncertain to sustain an award for lost profits.*** *Coast Transport v. Stone*, supra. See *McOmber v. Nuckols*, supra; *Williams v. Bone*, 74 Idaho 185, 259 P.2d 810 (1953); *Nelson v. Oversmith*, 69 Idaho 1, 201 P.2d 747 (1949).

*Jolley v. Puregro Co.*, 94 Idaho 702, 706-07, 496 P.2d 939, 943-44 (1972) *abrogated by Cheney v.*

*Palos Verdes Inv. Corp.*, 104 Idaho 897, 665 P.2d 661 (1983) (*Emphasis* supplied).

Certainly it was made clear in *L & L Furniture Mart, Inc. v. Boise Water Corp.*, 120 Idaho 107, 111, 813 P.2d 918, 922 (Ct. App. 1991) that “. . . the proper measure of damages for interruption of business . . . is reflected in Idaho pattern jury instruction (IDJI) 918, which

states that, for damages to a business, the jury may award the lesser of

1) the value of net profits lost as a result of the defendant's wrongful conduct and the present cash value of the net profits reasonably certain to be lost in the future by reason of that conduct; or 2) the reasonable expenses incurred by the plaintiff because of the defendant's wrongful conduct."

In fact the Idaho Court of Appeals went on to quote Black's Law Dictionary to drive the point home that "net" meant "net" and not something else:

Our conclusion is also supported by Black's Law Dictionary, which defines the word "net" as "That which remains after all allowable deductions such as charges, expenses, discounts, commissions, taxes, etc., are made." Black's Law Dictionary, p. 1040 (6th ed. 1990). "Net loss" is defined as the excess of all expenses and losses for a period over all revenues and gains for the same period. *Id.* "Net profits" are described as profits after all expenses, including overhead, have been deducted. *Id.* at p. 1041.

*L & L Furniture Mart, Inc. v. Boise Water Corp.*, 120 Idaho 107, 111, 813 P.2d 918, 922 (Ct. App. 1991).

While sometimes the Idaho Supreme Court and others only use the term "lost profits" it is clear from the history of this measure of damages that it always has referred to lost "net profits", i.e. the profits after overhead and other expenses of producing the income have been deducted:

Testimony as to gross income alone, or the difference between gross income before and after the tort, ***without evidence of the overhead expenses or other costs of producing the income, will not support a judgment for loss of profits.*** *Nelson v. Oversmith*, 69 Idaho 1, 201 P.2d 747; *Harrington v. Hadden*, 69 Idaho 22, 202 P.2d 236; *Williams v. Bone*, 74 Idaho 185, 259 P.2d 810. The plaintiffs' evidence as to loss of profit is incomplete, uncertain and speculative, and therefore is insufficient to support the judgment in their favor. *O'Brien v. Best*, 68 Idaho 348, 194 P.2d 608; *Harrington v. Hadden*, *supra*; 25 C.J.S. Damages § 26a, page 489, et seq.; 15 Am.Jur., Damages, § 20, page 410 et seq.; 1 Restatement of Contracts, § 331.

*McOmber v. Nuckols*, 82 Idaho 280, 283, 353 P.2d 398, 400-01 (1960) (***Emphasis*** supplied).

## CONCLUSION

The proper measure of damages in this case is lost "net profits". Mr. Hoffman's expert

testimony will not produce a calculation of "lost net profits." Expert testimony using the wrong measure of damages should not be admitted. Allowing expert testimony which calculates "lost profits" without deducting all overhead expenses and other costs of producing the income will be prejudicial, will lead to confusion of the issues, and will be misleading to the jury. Such evidence should not be admissible. IRE 403.

DATED this 27<sup>th</sup> day of October, 2014.

COOPER & LARSEN

  
GARY L. COOPER

### CERTIFICATE OF SERVICE

I hereby certify that on the 27<sup>th</sup> day of October, 2014, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
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GARY L. COOPER

# Est of Zilog Quote Prepared by ASI for Req for Prod No. 12

Complete highlighted fields

Calculated cell -- DO NOT CHANGE

Entered by Finance -- DO NOT CHANGE

Customer:

Project:

Add details of quote assumptions

## COST BASED PRICING ANALYSIS

COST ELEMENTS	RETICLES / NRE		\$ 454,801
	BASE	RATE	AMOUNT
<b>MASK DIRECT LABOR</b>			
Mask Prep - Scribe Generation	0	\$ 38.50	\$ -
Mask Prep - fixed (standard 3 reticle)	0	\$ 38.50	\$ -
Mask Prep - variable (2 hr/layer > 3 reticles)	0	\$ 38.50	\$ -
Design Engineering	1908	\$ 39.50	\$ 75,366
Layout Engineering	0	\$ 27.45	\$ -
<b>WAFER DIRECT LABOR</b>			
PI, CS and CT	0	\$ 42.31	\$ -
Test: BOI Engr FEOL:	0	\$ 20.00	\$ -
Test: BOI Engr BEOL:	0	\$ 20.00	\$ -
Process Engineering		\$ 38.50	\$ -
Fab Engineering	0	\$ 26.50	\$ -
<b>TOTAL DIRECT LABOR</b>			\$ 75,366
<b>FRINGE BENEFITS</b>		18.52%	\$ 13,958
<b>TOTAL INDIRECT LABOR EXPENSE</b>			\$ 13,958
<b>TOTAL DIR LABOR, BENE &amp; LBR OH</b>			\$ 89,324
<b>OTHER DIRECT COSTS</b>			
PHONO-D Design Tools Allocation	1	204870	\$ 204,870
<b>TOTAL OTHER DIRECT COSTS</b>			\$ 204,870
<b>RETICLE &amp; WAFER DIRECT MATERIALS</b>			
<b>RETICLE DIRECT MATERIAL</b>			
MLR ASM 5500/500 (248nm, 4X) - Max die size 10.08mm^2	0	\$2,750	\$ -
MLR ASM 5500/500 (248nm, 5X) - Max die size 10.08mm^2	0	\$2,300	\$ -
SLR ASM 5500/500 (248nm, 4X)	0	\$2,750	\$ -
SLR ASM 5500/500 (248nm, 5X)	0	\$2,300	\$ -
MLR ASML 1250XT (193nm 4X), 5500/500 (248nm, 4X)	0	\$5,800	\$ -
<b>TOTAL RETICLE DIR. MTR</b>			\$ -
<b>WAFER DIRECT MATERIALS</b>			
BULK Wafers	-	\$85	\$ -
SOI Wafers - SOI 129 or 402	-	\$415	\$ -
PI-2611 Polyimide	-	1230	\$ -
VM652	-	190	\$ -
<b>Materials Sub-total</b>			\$ -
<b>MATERIAL OVERHEAD</b>	\$0	2.26%	\$ -
<b>TOTAL DIRECT MATERIALS</b>			\$ -
<b>OTHER DIRECT COSTS</b>			
Mask OCD Describe			\$ -
SVTC Engineering Hrs	0	250	\$ -
TRAVEL (See Travel Detail: Bottom of page)			\$ -
<b>TOTAL ODCS</b>			\$ -
<b>ODC SUBTOTAL</b>			\$ 294,194
<b>G&amp;A</b>	\$ 294,194	32.13%	\$ 94,524
<b>SUBTOTAL</b>			\$ 388,718
<b>TOTAL COSTS</b>			\$ 388,718
<b>FIXED FEE (from Phono-D)</b>	\$ 388,718	17.00%	\$ 66,082
<b>TOTAL PRICE</b>			\$ 454,801

**Assumptions:**  
 Sage \$ Rate Hours  
 \$124,000 \$65.00 1908

OCT 31 2014

CHRISTOPHER D. RICH, Clerk  
BY KATRINA THIESSEN  
DEPUTY

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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG'S MOTION FOR  
RECONSIDERATION**

COMES NOW the Defendant Zilog, Inc. ("Zilog"), by and through its undersigned counsel of record, and pursuant to Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure, moves this Court for reconsideration of its ruling denying Zilog's motion for summary judgment as to tortious interference with contract claims asserted by American Semiconductor, Inc. ("ASI"), in the Fifth Cause of Action of ASI's Second Amended Complaint and Demand for Jury Trial.

Specifically, Zilog seeks an Order of the Court granting summary judgment to Zilog on ASI's claim that Zilog tortiously interfered with:

1. Section 2(a) (Trade Secrets and Confidential Information) of any of the Employee Confidentiality Agreements between ASI and David Roberts, Gyle Yearsley, William Tiffany, Russell Lloyd and Evelyn Perryman (the "Individuals");
2. Sections 3 (Disclosure of Inventions) or 4 (Assignment of Inventions) of any of the ECAs between ASI and the Individuals; and/or
3. Section 7 (Duty Not to Compete) of any of the ECAs between ASI and the Individuals.

In the event the Court does not agree with Zilog's request for summary judgment as to all three (3) of ASI's tortious interference with contract claims against Zilog, Zilog respectfully requests the Court to enter summary judgment on those of the three (3) claims as to which summary judgment is proper.

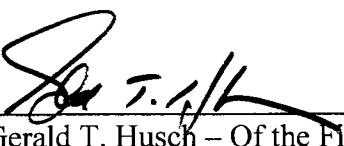
This motion is made and based upon the record herein including the Memorandum in Support of Zilog's Motion for Reconsideration and the Declaration of Gerald T. Husch Re: Zilog's Pretrial Motions (both of which are filed herewith), as well as the Memorandum in Support of Zilog, Inc.'s Motion for Summary Judgment and the Declaration of



Gerald T. Husch in Support of Zilog's Motion for Summary Judgment (both of which were filed in support of the original Motion for Summary Judgment dated August 29, 2014).

DATED this 31st day of October, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2014, I caused a true and correct copy of the foregoing **ZILOG'S MOTION FOR RECONSIDERATION** to be served by the method indicated below, and addressed to the following:

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*Attorney for Defendants Sage Silicon Solutions,  
LLC; David Roberts; Gyle Yearsley; and  
William Tiffany*

(x) U.S. Mail, Postage Prepaid  
( ) Hand Delivered  
( ) Overnight Mail  
( ) Facsimile

Daniel W. Bower  
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*Attorneys for Counterclaimants Sage Silicon  
Solutions, LLC; David Roberts; Gyle Yearsley;  
and William Tiffany*

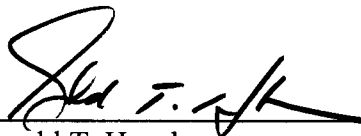
(x) U.S. Mail, Postage Prepaid  
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(x) Hand Delivered  
( ) Overnight Mail  
( ) Facsimile

  
\_\_\_\_\_  
Gerald T. Husch

OCT 31 2014

CHRISTOPHER D. RICH, Clerk  
DE KATHA THESSEN  
DEPUTY

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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**MEMORANDUM IN SUPPORT OF  
ZILOG'S MOTION FOR  
RECONSIDERATION**

## I. INTRODUCTION

This memorandum is filed in support of Zilog's Motion for Reconsideration, asking the Court to reconsider its Order denying Zilog, Inc.'s Motion for Summary Judgment with respect to portions of the Fifth Cause of Action (Tortious Interference with Prospective Economic Advantage and Contract) asserted by American Semiconductor, Inc. ("ASI"), in its Second Amended Complaint and Demand for Jury Trial ("SAC"). Specifically, Zilog, Inc. ("Zilog") requests the Court to grant summary judgment to Zilog on all three (3) of ASI's claims of tortious interference with contract.

## II. BACKGROUND

In its SAC, ASI asserted the following claims for relief against Zilog:

- Fifth Cause of Action (Tortious Interference with Prospective Economic Advantage and Contract),
- Sixth Cause of Action (Idaho Trade Secret Act Violation),
- Eighth Cause of Action (Unjust Enrichment),
- Tenth Cause of Action (Declaratory Relief), and
- Eleventh Cause of Action (Injunctive Relief).

At the hearing before the Court on September 26, 2014, the Court granted plaintiff American Semiconductor, Inc.'s Motion for Voluntary Dismissal (filed August 19, 2014) of its Sixth Cause of Action (Idaho Trade Secret Act Violation) and Eleventh Cause of Action (Injunctive Relief) against Zilog. *See* Declaration of Gerald T. Husch Re: Zilog's Pretrial Motions ("Husch Dec"), Ex. A (9/26/14 Hearing Transcript), 72:24 – 73:8 (Sixth Cause of Action), and 90:1-9 (Eleventh Cause of Action). At the same hearing, the Court granted Zilog's Motion for Summary Judgment on ASI's Eighth Cause of Action (Unjust Enrichment) and Tenth

Cause of Action (Declaratory Relief) against Zilog. *Id.*, 86:17-22 (Eighth Cause of Action), and 88:16-22 (Tenth Cause of Action). Finally, at the hearing on September 26, 2014, the Court denied Zilog's motion for summary judgment with respect to the Fifth Cause of Action (Tortious Interference with Prospective Economic Advantage and Contract Against Zilog) of ASI's SAC. Thus, ASI's sole remaining claims against Zilog are set forth in ASI's Fifth Cause of Action.

### III. ARGUMENT

In its Fifth Cause of Action, ASI has alleged a claim of tortious interference with contract and a claim of tortious interference with prospective economic advantage against Zilog. The former claim, for tortious interference with contract, is essentially three (3) separate claims, each of which is based upon one or more of the provisions of ASI's Employee Confidentiality Agreements (ECAs) with the Individuals. Thus, ASI is asserting (1) a claim for tortious interference with Section 2(a) (Trade Secrets and Confidential Information) of the ECAs, (2) a claim for tortious interference with Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) of the ECAs, and (3) a claim for tortious interference with Section 7 (Duty Not to Compete) of the ECA. *See* SAC, pp. 4-5, ¶ 18, and pp. 13-14, ¶ 89.

**A. Zilog Is Entitled to Summary Judgment on ASI's Claim for Tortious Interference with Section 2(a) (Trade Secrets and Confidential Information) of the Individuals' ECAs with ASI Because ASI Has Admitted that It Is Not Pursuing Any Claim for Misappropriation of a Trade Secret or Confidential Information Other than ASI's Claim for Tortious Interference with the Noncompetition Provisions of the ECAs.**

In asserting a claim of tortious interference with Section 2(a) (Trade Secrets and Confidential Information) of the ECAs, ASI is obviously attempting to assert a tort claim for

misappropriation<sup>1</sup> of ASI's alleged trade secrets or confidential information. In paragraph 18 of its SAC, ASI quoted Section 2(a) of the ECA, which provides as follows:

**2. Trade Secrets and Confidential Information.**

(a) Employee acknowledges that Employer's business and future success depend on the preservation of the trade secrets and other confidential information of Employer and its suppliers and customers (the "Secrets"). The Secrets include, without limiting the generality of the foregoing, research, development, production, existing and to-be-developed or acquired source codes, flow charts, product designs, market surveys, customer lists, business and financial information, product and marketing plans, personnel information, procedural and technical manuals and practices, servicing routines, and parts lists proprietary to Employer or its customers or suppliers. *Employee agrees to protect and to preserve as confidential during and after the term of his/her employment all of the Secrets at any time known to Employee or in his/her possession or control* (whether wholly or partially developed by Employee or provided to Employee, and whether embodied in a tangible medium or merely remembered).

SAC, p. 4, ¶ 18 (emphasis added).

In American Semiconductor, Inc.'s Memorandum in Opposition to Zilog, Inc.'s Motion for Summary Judgment ("ASI Opp. Memo."), ASI represented to the Court that ASI's claims of tortious interference claims against Zilog are in no way based upon a claim of misappropriation of ASI's confidential information:

*[N]either of ASI's tortious interference claims is based upon, seeks [a] remedy for, or in any way relies upon misappropriation of trade secret or other confidential information.*

ASI Opp. Memo. at 17 (emphasis added). Instead, ASI argued that "*ASI is pursuing a claim against Zilog for tortious interference with the individual defendants' and two other former*

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<sup>1</sup> Under the Idaho Trade Secrets Act, the term "misappropriation" includes wrongful "[a]cquisition," "[d]isclosure" or "use" of a trade secret of another. IDAHO CODE § 48-801(2)(a)-(b).

*ASI employees, Russell Lloyd and Evelyn Perryman's contractual obligations not to compete with ASI* during their employment.” *Id.* at 3 (emphasis added). In the 39-page ASI Opp. Memo., ASI never once opposed Zilog’s Motion for Summary Judgment based on Section 2(a) of the ECAs and never even cited to or quoted from Section 2(a) of the ECAs, instead focusing solely on Section 7 (Duty Not to Compete) of the ECAs. *See* ASI Opp. Memo., p. 19 (reference to “[t]he non-compete clause contained in Clause 7 of the ECAs”); p. 20 (reference to “[t]he ECA’s non-compete clause”); p. 21 (references to “the Non-Compete Agreements”); p. 23 (reference to the Individuals’ “Contractual Obligations Not To Compete With ASI”); p. 24 (reference to the Individuals being “subject to an employment agreement with ASI prohibiting them from working for or otherwise assisting a competitor with ASI’s business”); p. 25 (allegation that “**Zilog Induced Roberts, Tiffany, Lloyd, and Perryman to Breach their Non-Compete Agreements with ASI**”) (emphasis in original); p. 27 (references to the Individuals “competing with ASI’s business by providing their engineering services to Zilog” and their “competitive activities as Sage in soliciting Zilog’s business,” etc.); p. 28 (allegation that “**Zilog Interfered With [the Individuals’] Non-Compete Obligations**”) (emphasis in original); p. 29 (allegation that “Zilog intentionally disregarded the [Individuals’] non-compete obligations to ASI”); p. 30 (allegation that the Individuals “breached their non-compete obligations”); p. 32 (same); p. 38 (allegation that Zilog’s competing with ASI for [the Individuals’] engineering talent by intentionally ignoring their engineers’ contractual non-compete obligations to ASI”).

Thus, at the hearing before the Court on September 26, 2014, ASI argued that the focus of ASI’s tortious interference with contract claim is, at this point, “clearly on a noncompete clause”:

But [ASI's tortious interference claim] has nothing to do nor does it in any way rely upon or is it contingent upon any proof of a trade secret, the existence of any trade secret or proof of any misappropriation of a trade secret. ***The focus is at this point clearly on a noncompete clause*** and employment agreement that was breached . . . .

Husch Dec, Ex. A (9/26/14 Hearing Transcript), 58:23 – 59:4 (emphasis added).

In ASI's last words on the subject, at the hearing of September 26, 2014, ASI's counsel made an even broader representation to the Court, by stating that ASI is not claiming or asserting any claims based upon misappropriation of any confidential information:

THE COURT: . . . May that be the last word, Mr. Zarian?

MR. ZARIAN: Just one bullet point, Your Honor, if I may. ***Simply that for the avoidance of doubt, ASI does not claim or assert any claims based on misappropriation of confidential information*** as opposed to trade secrets. ***That is also not a part of the claims at this point.***

Husch Dec, Ex. A (9/26/14 Hearing Transcript), 71:1-8 (emphasis added).

Obviously, any claim of tortious interference with Section 2(a) (Trade Secrets and Confidential Information) of the ECAs is a claim for misappropriation of a trade secret or other confidential information. Since ASI has voluntarily dismissed its Sixth Cause of Action (Violation of Idaho Trade Secrets Act) and ASI has admitted that it is not making any claim based on misappropriation of ASI confidential information, Zilog is entitled to summary judgment on ASI's claim for tortious interference with Section 2(a) (Trade Secrets and Confidential Information) of the Individuals' ECAs with ASI.



**B. Zilog Is Entitled to Summary Judgment on ASI's Claim for Tortious Interference with Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) of the Individuals' ECAs with ASI Because ASI Has Admitted that It Is Not Pursuing Any Claim for Tortious Interference with Contract Against Zilog Other than ASI's Claim for Tortious Interference with the Noncompetition Provisions of the ECAs.**

ASI's second tortious interference with contract claim against Zilog is based upon Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) of the Individuals' ECAs with ASI. In paragraph 18 of its SAC, ASI quoted Sections 3 and 4 of the ECAs, which provide as follows:

**3. Disclosure of Inventions.** Employee will promptly disclose to Employer all inventions, improvements, designs, original works of authorship, formulas, processes, software programs, databases, mask works, and trade secrets (the "Inventions") that he/she has made or conceived or created, either alone or jointly with others, during the term of his/her employment, whether or not in the course of employment and whether or not such inventions are patentable, copyrightable or protectable as trade secrets.

**4. Assignments of Inventions.** *Employee agrees that all Inventions that (i) are developed using equipment, supplies, facilities, or trade secrets of Employer; (2) [sic] result from work performed by Employee for Employer; or (iii) relate to Employer's business or current or anticipated research and development, will be the sole and exclusive property of Employer, and Employee hereby irrevocably assigns all rights in such Inventions to Employer.* Employee will sign any assignment or other documents as requested by Employer to evidence such assignment during or after the term of his/her employment by Employer, and will otherwise assist Employer in protect[ing] it [sic] rights in such Inventions as requested by Employer.

SAC, p. 4, ¶ 18 (emphasis added).

In its 39-page ASI Opp. Memo., ASI never once opposed Zilog's Motion for Summary Judgment based on Sections 3 and 4 of the ECAs and never even cited to or quoted from Section 3 or 4 of the ECAs, instead focusing solely on Section 7 (Duty Not to Compete) of

the ECAs. Likewise, at oral argument, ASI never referred to any claim of tortious interference with Section 3 or 4 of the ECAs, but instead focused solely on the non-competition clause in the ECAs as the basis for ASI's tortious interference with contract claims. *See, e.g.*, Husch Dec, Ex. A (9/26/14 Hearing Transcript), 51:17 – 52:14 (ASI's counsel references the non-competition provisions in the ECAs but not the provisions regarding trade secrets and confidential information or the provisions regarding disclosure or assignment of inventions).

By ASI's own admission, its tortious interference with contract claim against Zilog is based solely upon the non-competition provisions of the ECAs. *See, e.g.*, Husch Dec, Ex. A (9/26/14 Hearing Transcript), 58:23 – 59:4 (ASI's counsel stated: "The focus is at this point clearly on a noncompete clause and employment agreement that was breached . . ."). Thus, Zilog is entitled to summary judgment on ASI's claim for tortious interference with Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) of the Individuals' ECAs with ASI.

**C. Zilog Is Entitled to Summary Judgment on ASI's Claims for Tortious Interference with Section 2(a) (Trade Secrets and Confidential Information), Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions), and Section 7 (Duty Not to Compete) of the Individuals' ECAs with ASI.**

ASI's third tortious interference with contract claim against Zilog is based upon Section 7 (Duty Not to Compete) of the Individuals' ECAs with ASI. In paragraph 18 of its SAC, ASI quoted Section 7 of the ECAs, which provides as follows:

**7. Duty Not to Compete.** Employee understands that his/her employment requires his/her undivided attention and effort during normal business hours. While employed, Employee will not, without Employer's express written consent, provide services to, or assist in any manner, any business or third party which competes with the current or planned business of Employer.

SAC, p. 5, ¶ 18. Of course, Zilog never entered into an ECA with ASI; only the Individuals did so.

ASI's claim—that Zilog tortiously interfered with ASI's rights under Section 2(a) (Trade Secrets and Confidential Information)—is nothing more than a claim that Zilog induced the Individuals, in providing services to Zilog, to breach their duties to maintain the secrecy of ASI's contractual "Secrets." In other words, this claim rises and falls based upon the same allegations as ASI's claim of misappropriation of its alleged trade secrets or other information. Likewise, ASI's claim that Zilog tortiously interfered with ASI's rights under Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) is but a claim that Zilog induced the Individuals, in providing services to Zilog, to use "Inventions" owned by or assigned to ASI. This claim also rises and falls based upon the same allegations as ASI's claim of misappropriation of a trade secret or other confidential proprietary information. ASI's claims that Zilog tortiously interfered with Section 2(a) (Trade Secrets and Confidential Information) and Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) are clearly tort claims and those tort claims clearly seek relief for misappropriation of ASI's alleged proprietary information—whether that information is called "trade secrets," "confidential information," or "Inventions." Since these tortious interference with contract claims arise out of the alleged misappropriation of ASI's alleged trade secrets, confidential information or Inventions, they are displaced by the Idaho Trade Secrets Act. As Judge Boyle stated in *Chatterbox, LLC v. Pulsar Ecoproducts, LLC*, 2007 WL 1388183 (D. Idaho 5-9-2007), "***UTSA preempts all claims based upon the unauthorized use of information, even if the information does not meet the statutory definition of a trade secret.***" *Id.* at \*3 (emphasis added); see also *Hauck Mfg. Co. v. Astec Industries, Inc.*, 375 F. Supp. 2d 649, 659-60 (E.D. Tenn. 2004) (plaintiff's claim against

competitor for tortious interference with plaintiff's confidentiality agreements with its employees is a claim for "misappropriation" of a plaintiff's "ideas, data or other commercially valuable information" and is preempted under the Uniform Trade Secrets Act, as adopted by Tennessee, and "would be preempted under any interpretation of UTSA preemption"); *Thomas & Betts Corp. v. Panduit Corp.*, 108 F. Supp. 2d 968, 974 (N.D. Ill. 2000) (claim that defendants tortiously interfered with plaintiff's business relations with its customers by engaging in misappropriation, i.e., unauthorized use, of plaintiff's trade secrets and confidential information, was displaced by Illinois Trade Secrets Act).

In its motion for summary judgment, Zilog argued that ASI's tortious interference with contract claims are displaced by ITSA because they are tort claims for misappropriation of ASI's alleged trade secrets or other confidential information and are based on the same nucleus of facts as ASI's claim under ITSA. Idaho Code Section 48-806 of ITSA (the "displacement provision") states:

Except as provided in subsection (2) of this section, *this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil liability remedies for misappropriation of a trade secret.*

IDAHO CODE § 48-806(1) (emphasis added). Under ITSA, any claim asserted by a plaintiff based on Idaho tort law is displaced or preempted if the claim is based on the same nucleus of facts as the plaintiff's claim of misappropriation of a trade secret or other information. See *Chatterbox, LLC v. Pulsar Ecoproducts, LLC*, 2007 WL 1388183, at \*4 (D. Idaho 5-9-2007) ("[P]laintiff's claims for unjust enrichment and unfair competition are based on the same nucleus of facts as its

trade secrets claim and, therefore, these should be dismissed [pursuant to Federal Rule of Civil Procedure 12(b)(6)] as preempted by the Idaho Trade Secrets Act.”) (citation omitted).<sup>2</sup>

It is easy to see how ASI’s claims of tortious interference with Section 2(a) (Trade Secrets and Confidential Information) and Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) are merely claims of misappropriation of ASI’s trade secrets or other information. Although ASI’s claim of tortious interference with Section 7 (Duty Not to Compete) of the ECAs requires more careful study, it is also a claim of misappropriation of ASI’s trade secrets or other confidential information. Under the Idaho Trade Secrets Act, the term “misappropriation” includes wrongful “[a]cquisition,” “[d]isclosure” or “use” of a trade secret of another. IDAHO CODE § 48-801(2)(a)-(b). The term “misappropriation” is clearly broad enough to include ASI’s allegation that Zilog’s alleged use of ASI’s trade secrets or other information. Each of the agreements at issue is entitled “Employee *Confidentiality* Agreement” (emphasis added), and Paragraph 1 of each of the agreements, in describing its “[p]urpose,” states that “this Agreement is necessary for the protection of Employer’s . . . information . . . .” Husch Dec, Ex. B, Deposition (“Dep”) Ex. 12 (Employee Confidentiality Agreement) p. 1, ¶ 1.

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<sup>2</sup> However, the Court denied Zilog’s motion for summary judgment on ASI’s Fifth Cause of Action (Tortious Interference with Prospective Economic Advantage and Contract), ruling that “ASI’s two common law tortious interference claims as pled require a determination of elements and facts which are distinct and independent from any other claim alleging misappropriation of trade secrets.” Zilog respectfully submits that the Court, in so ruling on ASI’s tortious interference with contract claim, effectively (and erroneously) rejected the “nucleus of facts of the case” rule employed by Judge Boyle in *Chatterbox* and instead applied the minority “comparison of the elements” test. See *BlueEarth Biofuels, LLC v. Hawaiian Elec. Co.*, 235 P.3d 310, 316 (Haw. 2010) (“[o]nly a minority of courts apply the ‘elements’ test to determine preemption”); “[t]he majority of courts have rejected the ‘elements’ test and have instead examined the factual allegations underlying each claim, whatever its label, is based upon misappropriation of a trade secret.”) (footnote omitted) (citing *Chatterbox, LLC v. Pulsar Ecoproducts, LLC*, 2007 WL 1388183, at \*4 (D. Idaho 5-9-2007).

Plaintiff's own expert states that one of the purposes of the ECAs is to protect confidential information. Husch Dec, Ex. C (08/04/14 Stephen Holland Expert Witness Report) pp. 33-34 ("One of the reasons companies in the industry insist on such provisions is to protect confidential information."). Indeed, the two principal purposes for noncompetition agreements are to protect confidential information and customer goodwill, and the only purpose for Section 7 in the case at bar was to protect ASI's alleged confidential information because Zilog was not a customer of ASI. See Husch Dec, Ex. D (Douglas R. Hackler Dep Transcript ("D. Hackler Dep")<sup>3</sup> 9:1 – 11:9; Husch Dec, Ex. E (Staab Dep) 147:22 – 148:10; Husch Dec, Ex. F (Wilson Dep) 61:14 – 62:19. See *Intermountain Eye & Laser Ctrs., P.L.L.C. v. Miller*, 142 Idaho 218, 225, 127 P.3d 121, 129 (2005) (employer may use noncompetition agreement to protect employer's trade secrets or other confidential or proprietary information); *Freiburger v. J-U-B Eng'rs, Inc.*, 141 Idaho 415, 420, 111 P.3d 100, 105 (2005) (employer may use noncompetition agreement to protect its customer relationships). See also IDAHO CODE § 44-2702(2).

Furthermore, ASI alleges that "Zilog tortiously interfered with the Employee Confidentiality Agreements by soliciting or accepting *design services* from the Individuals in violation of the Individuals' respective contractual obligations to American Semiconductor under the Employee Confidentiality Agreements. SAC, pp. 13-14, ¶ 89 (emphasis added). Those "design services" are information that ASI claims to be ASI's proprietary information by virtue of Sections 3 and 4 of the ECAs, which state that "*all* of the *Individuals*' " inventions, improvements, *designs*, original works of authorship, formulas, processes, software programs,

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<sup>3</sup> All deposition transcript excerpts are attached as exhibits to the Husch Dec filed concurrently herewith. All citations to deposition testimony will reflect the deponent's last name followed by the page and line reference, e.g., D. Hackler Dep, 9:1 – 11:9, citing page 9, line 1 through page 11, line 9.

databases, mask works, and trade secrets (the ‘Inventions’))” that related to ASI’s business “*will be the sole and exclusive property of Employer . . .*” In other words, *ASI is claiming that Zilog tortiously interfered with ASI’s rights under the noncompetition provisions of the ECAs by soliciting and accepting ASI’s proprietary information from the Individuals.* The Individual Defendants were all design engineers.<sup>4</sup> The work they performed was design work.<sup>5</sup> ASI specifically claims that Zilog interfered with the Individuals’ noncompetition obligations for the purpose of obtaining ASI’s technological information. See July 7, 2014, Memorandum in Support of Plaintiff American Semiconductor, Inc.’s Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages at 23 (“Zilog’s interference with Roberts, Yearsley, and Tiffany’s . . . non-compete obligations *in order to obtain ASI’s technology* without ASI’s consent and at well below ASI’s actual cost does not constitute legitimate competition.”) (emphasis added).

Finally, although the Court has noted that the elements of ASI’s claims of misappropriation of trade secrets differ from the elements of its tortious interference with contract claims, the same is true of ASI’s unjust enrichment and declaratory judgment claims and the Court granted summary judgment to Zilog on ASI’s Eighth Cause of Action (Unjust Enrichment) and Tenth Cause of Action (Declaratory Relief). In addition, the “same elements”

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<sup>4</sup> See Husch Dec, Ex. G, Dep Ex. 290 (12/09/09 email from Dale Wilson to Lorelli Hacker); Husch Dec, Ex. H, Dep Ex. 299 (01/18/10 ASI letter to Gyle Yearsley); Husch Dec, Ex. I, Dep Ex. 300 (01/18/10 ASI letter to William Tiffany, Sr.); Husch Dec, Ex. J, Dep Ex. 301 (01/18/10 ASI letter to David A. Roberts); Husch Dec, Ex. K (Chaney Dep) 70:4-22, 96:13-21, and 127:1 – 128:7; Husch Dec, Ex. L (L. Hackler Dep), 108:14-19.

<sup>5</sup> See Husch Dec, Ex. K (Chaney Dep) 70:4-22, 96:13-21, and 127:1 – 128:7; Husch Dec, Ex. L (L. Hackler Dep) 108:14-19.

test is the minority rule in displacement cases under the UTSA.<sup>6</sup> As the court reasoned in

*Chatterbox*:

Because the Idaho Legislature's purpose in enacting the ITSA was to promote the goal of uniformity, it is appropriate for courts applying Idaho law to follow the majority view in interpreting the displacement provision.

*Chatterbox* at \*3 (D. Idaho 5-9-2007). Under the "same nucleus of facts" rule adopted by the majority of courts, including Judge Boyle, ASI's claims of tortious interference arise out of the same nucleus of facts as its trade secrets claim and are therefore preempted by the Uniform Trade Secrets Act. *Chatterbox* at \*4 (D. Idaho 5-9-2007). Here, as in *Hauck Mfg. Co. v. Astec Industries, Inc.*, 375 F. Supp. 2d 649 (E.D. Tenn. 2004):

The specific contractual provisions at issue (and, for that matter, the contracts as a whole), the nature and manner of the alleged breach, and the alleged harm to Plaintiff all relate exclusively to the disclosure of secret, confidential, and/or proprietary information to Astec. As such, it would appear Plaintiff's tortious interference and unlawful procurement claims are preempted, at least to the extent they rely on the confidentiality agreements.

375 F. Supp. 2d at 659.

In sum, since ASI's claims of tortious interference with Sections 2(a) (Trade Secrets and Confidential Information), Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) and Section 7 (Duty Not to Compete) of the ECAs are all tort claims and all arise out of the same nucleus of facts as ASI's claims of misappropriation of its trade secrets or other information, those claims are displaced by ITSA. *Id.*

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<sup>6</sup> See footnote 2, above.



#### IV. CONCLUSION

Based upon the foregoing, Zilog respectfully requests the Court to grant Zilog's Motion for Reconsideration and enter summary judgment for Zilog on ASI's tortious interference with contract claims insofar ASI seeks to assert (1) a claim for tortious interference with Section 2(a) (Trade Secrets and Confidential Information) of the ECAs, (2) a claim for tortious interference with Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) of the ECAs, and (3) a claim for tortious interference with Section 7 (Duty Not to Compete) of the ECA. If the Court does not agree with Zilog's request for summary judgment as to all three claims, Zilog respectfully requests the Court to enter summary judgment on those of the three claims for which summary judgment is proper.

DATED this 31st day of October, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By 

Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2014, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF ZILOG'S MOTION FOR RECONSIDERATION** to be served by the method indicated below, and addressed to the following:

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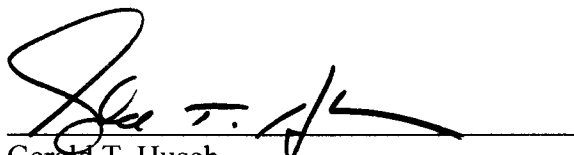
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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG'S MOTION IN LIMINE RE:  
TESTIMONY OF RICHARD S.  
HOFFMAN, CPA/ABV**

**ZILOG'S MOTION IN LIMINE RE: TESTIMONY OF  
RICHARD S. HOFFMAN, CPA/ABV - 1**

Client: 3616479.1  
001220

COMES NOW Defendant Zilog, Inc. ("Zilog"), by and through its undersigned counsel of record, and pursuant to Idaho Rules of Evidence 103, 104, 401 and 402, hereby moves the Court for an order in limine against plaintiff herein, American Semiconductor, Inc. ("ASI"), with respect any opinion by Richard S. Hoffman, CPA/ABV, as to any lost profits sustained by ASI (the "Subject Matter"). Specifically, Zilog moves the Court to enter an order in limine:

(a) prohibiting ASI and its counsel and witnesses from making any statement or argument in the presence of any juror or prospective juror, whether during voir dire, opening statement, trial, closing argument or otherwise, referring in any way to the Subject Matter;

(b) requiring ASI and its counsel to advise each ASI employee and other representative and each of ASI's trial witnesses of the contents of the Court's Order in Limine, before such employee, representative, or witness enters the courtroom;

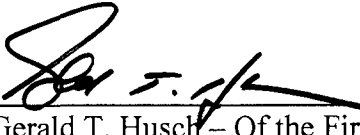
(c) prohibiting ASI from introducing or attempting to introduce evidence of or argument regarding the Subject Matter at trial; and

(d) ordering that any document or exhibit otherwise admissible, which mentions or relates to such Subject Matter, be redacted to delete said reference before admission into evidence and/or before the jury is permitted to see it or hear reference to it.

This motion is made on the grounds and for the reasons that evidence of the Subject Matter is not relevant or admissible against defendant Zilog in this action. This motion is based upon the record herein, including the memorandum of law and declaration of undersigned counsel filed herewith.

DATED this 31st day of October, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2014, I caused a true and correct copy of the foregoing **ZILOG'S MOTION IN LIMINE RE: TESTIMONY OF RICHARD S. HOFFMAN, CPA/ABV** to be served by the method indicated below, and addressed to the following:

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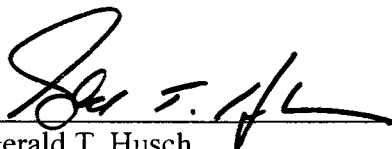
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OCT 31 2014

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
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Plaintiff,

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SAGE SILICON SOLUTIONS, LLC, an  
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SAGE SILICON SOLUTIONS, LLC, an  
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TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**MEMORANDUM IN SUPPORT OF  
ZILOG'S MOTION IN LIMINE RE:  
TESTIMONY OF RICHARD S.  
HOFFMAN, CPA/ABV**

Defendant Zilog, Inc. ("Zilog") has moved the Court for an order in limine against plaintiff herein, American Semiconductor, Inc. ("American Semiconductor" or "ASI"), with respect to the lost profit opinions of Richard S. Hoffman, CPA/ABV. In submitting this memorandum, Zilog joins in the Motion in Limine of Hoffman Opinions, filed by Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany ("Sage Defendants") filed on or about October 27, 2014.

### I. SYNOPSIS

American Semiconductor has disclosed Richard S. Hoffman, CPA/ABV ("Hoffman") as an expert witness who intends to offer an opinion as to the profits allegedly lost by American Semiconductor as a result of Zilog's engagement of Sage Silicon Solutions, LLC ("Sage") instead of ASI. *See e.g.* Declaration of Gerald T. Husch Re: Zilog's Pretrial Motions ("Husch Dec"), Exhibit ("Ex.") O, (8/4/14 Expert Witness Report of Richard S. Hoffman ("Hoffman Report")) p. 4, filed concurrently herewith. Hoffman's testimony must be excluded because his testimony is based upon unsupported assumptions and an inappropriate method of calculating lost profits that has been previously deemed unsupportable by the Idaho Supreme Court.

Hoffman's analysis is based solely on ASI's claim that "*if* not for Sage's wrongful conduct, ASI would have been hired by Zilog rather than Sage. Thus, ASI lost the profit that it would have otherwise generated." Husch Dec, Ex. O (Hoffman Report), p. 4 (emphasis added). These assumptions are not substantiated by the facts in evidence. The record is clear that ASI never submitted and Zilog never approved a bid from American Semiconductor. Instead, American Semiconductor's damages are based on the "process ASI *would have used to invoice the project*, e.g. Exhibit 325 (and shown in Schedules 2 - 5)." Husch Dec, Ex. O



(Hoffman Report), p. 9 (emphasis added). Because expert Hoffman's lost profit analysis is based on an incorrect premise, Hoffman cannot demonstrate to the degree of reasonable certainty required to establish lost profit. Mr. Hoffman agreed in his deposition on October 30, 2014, that if Zilog would not have hired ASI in any event, ASI would not have lost profits:

MR. HUSCH. Okay. So, your opinion that ASI lost profits is based on your assumption that Zilog would have hired ASI rather than Sage if not for Sage's wrongful conduct; correct?

MR. HOFFMAN. I think that's true.

MR. HUSCH. So, if Zilog would not have hired ASI in any event, then ASI would not have lost any profits; correct?

MR. HOFFMAN. *It would not have lost profits from missing out on the contract, true.*

Husch Dec, Ex. N (Richard S. Hoffman Deposition Transcript ("Hoffman Dep")), 4:14-23 (emphasis added).

Here, American Semiconductor cannot provide, with reasonable certainty, that Zilog would have hired American Semiconductor. There is no evidence of any business being taken away from American Semiconductor (separate and apart from ASI's alleged expectancy of contracting with Zilog). Because the assumption Hoffman bases his report on is based in speculation, it does not provide any reasonable foundation upon which the jury may calculate damages. Therefore, Hoffman's testimony must be excluded.

Separately, Hoffman assumes that the amount identified in Exhibit 325 reflects the amounts "ASI customarily charged." Husch Dec, Ex. O (Hoffman Report), p. 9. Hoffman fails to engage in any analysis comparing American Semiconductor's proposed invoice to invoices actually submitted and approved by American Semiconductor for other design engineering services (notably the PS10 ASIC project) approved by third parties. There is no analysis as to what American Semiconductor had done in the past and whether business records

support the profits, costs, and expenses Hoffman was given in Deposition Exhibit 325 are accurate. Accordingly, Hoffman's testimony must be excluded.

## **I. LEGAL STANDARD**

This Court has the authority to determine the admissibility of expert testimony pursuant to Idaho Rule of Evidence 104(a), which provides that "[p]reliminary questions concerning the qualifications of a person to be a witness . . . or the admissibility of evidence shall be determined by the court." The admissibility of expert testimony should be determined before the case is submitted to the jury. *Coombs v. Curnow*, 148 Idaho 129, 219 P.3d 453 (2009). Whether to admit expert testimony is a matter committed to the discretion of the court. *Weeks v. E. Idaho Health Serv.*, 143 Idaho 834, 838, 153 P.3d 1180, 1184 (2007).

The standard for determining the admissibility of expert testimony is set forth in Idaho Rule of Evidence 702:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Under this rule, the key issue is whether the testimony *will assist* the jury, not whether the testimony is based upon a theory that is commonly agreed upon. *Weeks*, 143 Idaho at 838, 153 P.3d at 1184. "Expert opinion which is speculative, conclusory, or unsubstantiated by facts in the record is of no assistance to the jury in rendering its verdict and, therefore, is inadmissible as evidence." *Id.* (citing *Bromley v. Garey*, 132 Idaho 807, 811, 979 P.2d 1165, 1169 (1999)).

An expert's opinion must be "substantiated by facts in evidence." *Ryan v. Beisner*, 123 Idaho 42, 46-47, 844 P.2d 24, 28-29 (Ct. App. 1992) (citing *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 806 (9th Cir. 1988) (district court properly excluded opinion testimony

of expert who did not back up his opinion with specific facts, rather his opinion was speculative, resting on unsupported assumptions); *Theonnes v. Hazen*, 37 Wash. App. 644, 681 P.2d 1284 (1984) (opinion of an expert must be based on facts, and an opinion which is simply a conclusion or is based on an assumption is not evidence which will take the case to the jury)). If an expert does not identify facts that support his opinion, it “has little or no probative value, and therefore may be excluded because its probative value is ‘substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.’” *Id.* (quoting IDAHO R. EVID. 403); see also *J-U-B Eng’rs v. Sec. Ins.*, 146 Idaho 311, 316, 193 P.3d 858, 863 (2008) (holding that the court did not err in striking opinion testimony where the affiant did not identify the facts or reasoning upon which his opinion was based).

Additionally, if an expert’s opinion is based upon scientific knowledge, the reasoning or methodology underlying the opinion must be scientifically sound. *Swallow v. Emergency Med. of Idaho, P.A.*, 138 Idaho 589, 592, 67 P.3d 68, 71 (2003); *State v. Merwin*, 131 Idaho 642, 646, 962 P.2d 1026, 1030 (1998). Although the basis for the expert’s opinion need not be universally agreed upon, the “principles and methodology” must be reliable. *Merwin*, 131 Idaho at 646, 962 P.2d at 1030. “If the reasoning or methodology underlying [the] opinion is not scientifically sound, then the opinion will not assist the trier of fact to understand the evidence or determine a fact in issue.” *Swallow*, 138 Idaho at 592, 67 P.3d at 71.

## **II. ARGUMENT**

### **A. Proof Standards for Recovery of Lost Profits Under Idaho Law.**

Opinion testimony offered to establish lost profits must be based on facts in the record and not mere assumptions. *Saint Alphonsus Diversified Care Inc. v. MRI Assocs., LLP*, 148 Idaho 479, 498, 224 P.3d 1068, 1087 (2009) (citing *Pope v. Intermountain Gas Co.*, 103

Idaho 217, 646 P.2d 988 (1982)). Testimony that does not provide a reasonable foundation for the calculation of lost profits will not sustain an award of damages. *Pope*, 103 Idaho at 234, 646 P.2d at 1005.

The plaintiff bears the burden of proving lost profits with “reasonable certainty” and providing a foundation from which the factfinder “may make a just and reasonable estimate of the damage based on relevant data.” *Pope*, 103 Idaho at 233-34, 646 P.2d at 1004-05 (quoting *Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 264 (1946)). “The purpose of the ‘reasonable certainty’ rule is to avoid making compensatory damages awards for lost profits which are *fabricated or based on mere conjecture or speculation.*”<sup>1</sup> *Jolley v. Puregro Co.*, 94 Idaho 702, 706, 496 P.2d 939, 943 (1972) (emphasis added). See also *Magic Valley Truck Brokers, Inc. v. Meyer*, 133 Idaho 110, 115, 982 P.2d 945, 950 (Ct. App. 1999) (“‘Reasonable certainty’ does not require that damages be proved with mathematical exactitude, but the evidence must be sufficient to take the damages out of the realm of speculation.”) (internal citations omitted).

In establishing lost profits with reasonable certainty, the plaintiff must provide evidence showing actual profits and expenses for prior years and showing consistent variables from which future estimates can be made. *Nora v. Safeco Ins. Co.*, 99 Idaho 60, 577 P.2d 347 (1978); *Jolley*, 94 Idaho at 706-07, 496 P.2d at 943-44. This requires proof of evidence falling into one of three categories: “(1) comparison of plaintiff’s performance before and after the wrongful conduct under otherwise similar conditions; (2) comparison of performance of plaintiff’s business, with comparable business in an unrestrained market otherwise comparable to plaintiff’s market; or (3) loss of specific business or customers.” *Pope*, 103 Idaho at 236, 646

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<sup>1</sup> See Black’s Law Dictionary (9th ed. 2009) defining speculation as “The act or practice of theorizing about matters over which there is no certain knowledge.”

P.2d at 1007 (citations omitted). Such evidence must include business records demonstrating plaintiff's past volume of business and profit margins. *Nora*, 99 Idaho 60, 577 P.2d 347; *Jolley v. Puregro Co.*, 94 Idaho 702, 706, 496 P.2d 939, 943 (1972).

In *Pope*, the plaintiff sought an award of lost profits for the alleged unfair competition of the defendant competitor, but the only evidence offered in support of the claim for damages was evidence of the competitor's gross profits. The court concluded:

*[T]here was no justification . . . for the trial court's determination that the gross revenues of the defendant Intermountain Gas Company and IGCP provide[d] a reasonable foundation for calculating the lost profits of plaintiffs.* Such a method of figuring damages assumes, without any support in the record, that the HomeGuard operation would not have won any portion of the insulation market absent antitrust violations. Furthermore, it assumes that the plaintiffs had the capacity to assimilate all of the business which HomeGuard performed, and that plaintiffs would have won that business over other insulators who chose not to participate in this action. There is simply no evidence in the record to demonstrate a relationship between HomeGuard's sales figures and plaintiffs' damages so as to support a conclusion that HomeGuard's income was the equivalent of plaintiffs' lost profits.

103 Idaho at 234, 646 P.2d at 1005 (emphasis added).

In a recent case where the plaintiff sought an award of lost profits for intentional interference with prospective contractual relations or business expectations, the Idaho Supreme Court noted that the holding in *Pope* provides the appropriate measure of damages and quoted the same section of that case as quoted above. See *Saint Alphonsus Diversified Care, Inc.*, 148 Idaho at 498, 224 P.3d at 1087. The court did not decide on appeal whether certain opinion testimony was admissible. However, in remanding the case for a new trial, the court noted that the expert's opinion offered in the first trial was based on assumptions that plaintiff's allegedly lost business had gone to the competitor and that none of this business would have gone to the competitor but for the wrongdoing. *Id.*

**B. Hoffman's Testimony Must Be Excluded Because Hoffman's Entire Lost Profits Analysis Is Based on Mere Conjecture and Speculation.**

The basic assumptions underlying Hoffman's report are not substantiated by facts in evidence, a prerequisite to admissibility. *Weeks*, 143 Idaho at 838, 153 P.3d at 1184 (internal citation omitted). "Damage awards based upon speculation and conjecture will not be allowed." *Todd v. Sullivan Const. LLC*, 146 Idaho 118, 122, 191 P.3d 196, 200 (2008) *Inland Group Cos., Inc. v. Providence Washington Ins. Co.*, 133 Idaho 249, 257, 985 P.2d 674, 682 (1999) (citations omitted). Here, Hoffman's entire lost profit and future earnings calculation is based on the unsupported premise that "*if* not for Sage's wrongful conduct, ASI would have been hired by Zilog rather than Sage" and that "*If* ASI had performed the work necessary to bring the project to Tape-Out, ASI would have performed an additional 2,413.15 hours of work." Husch Dec, Ex. O (Hoffman Report), pp. 4-5. Hoffman testified that if these assumptions were incorrect, American Semiconductor would not have lost profits. Husch Dec, Ex. N (Hoffman Dep), 4:2-23.

**1. Hoffman's assumption that ASI would have been hired by Zilog rather than Sage is not substantiated by facts in evidence.**

There is no evidence to support ASI's contention that Zilog would have paid ASI more than four times as much per hour for the exact same design engineers to perform the work to Zilog through ASI as opposed to Sage. The undisputed evidentiary record establishes that when Dave Roberts first offered ASI's services to Zilog in 2009, Zilog did not want to go in the direction ASI wanted to go. *See* Declaration of Gerald T. Husch in Support of Zilog's Motion for Summary Judgment, Ex. G. (Dep Ex. 11). ASI admitted that if ASI "wanted to do design work for Zilog," ASI would have approached Staab or Sheridan, *id.*, Ex. I (D. Wilson Dep) 198:1-5, and there is no evidence that ASI contacted either of them. Likewise, there is no

evidence that ASI ever submitted to Zilog a quote or bid for the work done by Sage. Moreover, according to ASI's after-the fact proposed but undelivered quote, ASI would have charged Zilog \$454,801 for 1908 hours of design engineering—or over \$238 per hour—for design engineering services. Declaration of David R. Staab in Opposition to Plaintiff's Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages ("Staab Dec"), p. 3, ¶ 6, and Ex. C. Mr. Staab has testified that if he had received a quote or bid from ASI to perform design engineering services at the rate of \$238 per hour, Staab would not have retained ASI to provide Zilog with any such services (or other services provided by Sage) because ASI's hourly rate of \$238 was too high a rate to have been acceptable. *Id.* at 3, ¶ 7. Mr. Staab had caused Zilog to retain Sage and compensate Sage at rates of \$45 to \$65 per hour for the services performed by Sage. *Id.* at 3, ¶ 7.

**2. Hoffman's assumption that Zilog would have retained ASI to performed the work necessary to bring the project to Tape-Out is not supported by substantial evidence.**

On September 27, 2011 (the day ASI demanded Zilog terminate its contract with Sage), ASI offered to complete the project for Zilog. *See* Husch Dec, Ex. P (9/27/11 Correspondence) Dep Ex. 380. ("[ASI] might consider continuing design work for Zilog under this project at market rates, and may be willing to discuss completion of this assignment with your company."). Zilog did not accept ASI's offer or ask ASI for a bid. Instead Zilog used another IXYS subsidiary, Clare, (at \$95.00 per hour) to ultimately completed, the Zilog project. *See* Memo Opposing ASI's Motion for Partial Summary Judgment Re: Claims Against Roberts, Yearsley, Tiffany and Sage, p. 3; Staab Dep, 136:7-136:15.

Here, Hoffman's underlying premise is speculative, conclusory, and unsubstantiated by facts in the record and is of no assistance to the jury. As such, this Court should grant Zilog's motion in limine.

**C. Hoffman' Testimony Must Be Excluded Because Harris Does Not Use a Valid Method of Calculating Damages.**

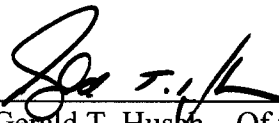
Separately, as fully briefed by the Sage Defendants and incorporated herein, Hoffman's lost profits analysis assumes that the alleged lost profits actually represented a reasonable forecast of the ASI's expectancy based on prior business dealings. *See* Husch Dec, Ex. O (Holland Report), p. 9 ("I have therefore assumed that Zilog would have paid the fair market price for the services it desired as reflected in the amounts *ASI customarily charged*") (emphasis added). Accordingly, Hoffman's testimony lacks any reasonable foundation for measuring damages, and it will not sustain an award of damages because it will not assist the jury. *See* Sage Defendants Memo. p. 3-9. Thus, to comply with the rules of evidence and avoid prejudicing the jury, Hoffman's testimony must be excluded at trial.

**II. CONCLUSION**

Based upon the foregoing grounds and authorities, Zilog respectfully requests that this Court exclude the expert testimony of Richard S. Hoffman as to lost profits.

DATED this 31st day of October, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2014, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF ZILOG'S MOTION IN LIMINE RE: TESTIMONY OF RICHARD S. HOFFMAN, CPA/ABV** to be served by the method indicated below, and addressed to the following:

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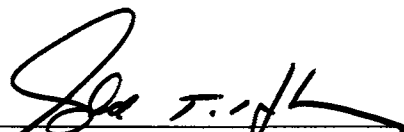
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG'S MOTIONS IN LIMINE RE:  
(1) MISAPPROPRIATION OF ASI'S  
CONFIDENTIAL INFORMATION AND  
(2) ASI'S ALLEGED PROSPECTIVE  
ECONOMIC EXPECTANCY WITH  
ZILOG**

**ZILOG'S MOTIONS IN LIMINE RE: (1) MISAPPROPRIATION OF ASI'S  
CONFIDENTIAL INFORMATION AND (2) ASI'S ALLEGED PROSPECTIVE  
ECONOMIC EXPECTANCY WITH ZILOG - 1**

COMES NOW Defendant Zilog, Inc. ("Zilog"), by and through its undersigned counsel of record, and pursuant to Idaho Rules of Evidence 103, 104, 401 and 402, hereby moves the Court for an order in limine against plaintiff herein, American Semiconductor, Inc. ("ASI"), with respect to the following subject matters: (1) that Zilog misappropriated (*i.e.*, either wrongfully acquired, disclosed or used) ASI's confidential information, and (2) ASI's alleged prospective economic expectancy or advantage with Zilog (the "Subject Matters"). Specifically, Zilog moves the Court to enter an order in limine:

(a) prohibiting ASI and its counsel and witnesses from making any statement or argument in the presence of any juror or prospective juror, whether during *voir dire*, opening statement, trial, closing argument or otherwise, referring in any way to the Subject Matters;

(b) requiring ASI and its counsel to advise each ASI employee and other representative and each of ASI's trial witnesses of the contents of the Court's Order in Limine, before such employee, representative, or witness enters the courtroom;

(c) prohibiting ASI from introducing or attempting to introduce evidence of, or argument regarding, the Subject Matters at trial; and

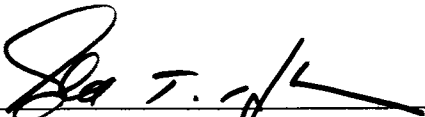
(d) ordering that any document or exhibit otherwise admissible, which mentions or relates to such Subject Matters, be redacted to delete said reference before admission into evidence and/or before the jury is permitted to see it or hear reference to it.

This motion is made on the grounds and for the reasons that evidence of the Subject Matters is not relevant or admissible against defendant Zilog in this action. This motion

is based upon the record herein, including the memorandum of law and declaration of undersigned counsel filed herewith.

DATED this 31st day of October, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2014, I caused a true and correct copy of the foregoing **ZILOG'S MOTIONS IN LIMINE RE:**

**(1) MISAPPROPRIATION OF ASI'S CONFIDENTIAL INFORMATION AND (2) ASI'S ALLEGED PROSPECTIVE ECONOMIC EXPECTANCY WITH ZILOG** to be served by the method indicated below, and addressed to the following:

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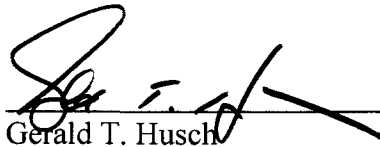
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OCT 31 2014

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
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AMERICAN SEMICONDUCTOR, INC., an  
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**MEMORANDUM IN SUPPORT OF  
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**MEMORANDUM IN SUPPORT OF ZILOG'S MOTIONS IN LIMINE RE:  
(1) MISAPPROPRIATION OF ASI'S CONFIDENTIAL INFORMATION AND (2) ASI'S  
ALLEGED PROSPECTIVE ECONOMIC EXPECTANCY WITH ZILOG - 1**

## I. INTRODUCTION

In Zilog, Inc.'s Motions in Limine Re: (1) Misappropriation of ASI's Confidential Information, and (2) ASI's Alleged Prospective Economic Expectancy with Zilog ("Zilog's Motions in Limine"), Zilog seeks an Order of the Court in limine that is consistent with and implements the positions advanced by American Semiconductor Incorporated ("ASI" or "American Semiconductor") in its briefing and in representations to this Court. In general, the requested Order in Limine would preclude ASI from: (1) introducing at trial any evidence or argument that Zilog wrongfully acquired, disclosed or used any of ASI's confidential information; and (2) introducing at trial any evidence or argument regarding ASI's alleged prospective economic expectancy or advantage with Zilog.<sup>1</sup>

## II. BACKGROUND

On August 29, 2014 Zilog filed Zilog's Motion for Summary Judgment, together with a Memorandum in Support of Zilog's Motion for Summary Judgment ("Zilog SJ Memo.") and the Declaration of Gerald T. Husch in Support of Zilog's Motion for Summary Judgment. ASI filed its Memorandum in Opposition to Zilog, Inc.'s Motion for Summary Judgment ("ASI Opp. Memo.") on September 12, 2014. This Court heard oral argument on Zilog's Motion on September 26, 2014. As it relates to Zilog's Motions in Limine, the parties argued the summary judgment motion as follows:

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<sup>1</sup> Zilog's Motions in Limine seeks an Order with provisions that parallel those in Zilog's Motions in Limine, precluding, *inter alia*, argument or reference to the same two subjects, be it in *voir dire*, opening statement, witness examinations, closing arguments, or otherwise.

**A. American Semiconductor's Tortious Interference with Contract Claim.**

Zilog's chief argument was that American Semiconductor's tortious interference with contract claim "is nothing more than a claim that Zilog induced the Individuals, in performing design services to Zilog, to breach their duties to maintain the secrecy of ASI's contractual 'Secrets'" and as such, the claim was preempted by Idaho Code §48-801(2)(a)-(b)<sup>2</sup> and the holding in *Chatterbox, LLC v. Pulsar Ecoproducts, LLC*, 2007 WL 1388183 (D. Idaho 5-9-2007). Zilog SJ Memo., p. 6-13.

In its opposition memorandum, ASI represented to the Court that ASI's tortious interference claims against Zilog are not based upon a claim of misappropriation of ASI's confidential information:

*[N]either of ASI's tortious interference claims is based upon, seeks [a] remedy for, or in any way relies upon misappropriation of trade secret or other confidential information.*

ASI Opp. Memo. at 17 (emphasis added). Instead, ASI argued that "ASI is pursuing a claim against Zilog for tortious interference with the individual defendants' and two other former ASI employees, Russell Lloyd and Evelyn Perryman's contractual obligations not to compete with ASI during their employment." *Id.* at 3.

In ASI's last words on the subject, at the hearing of September 26, 2014, ASI's counsel made an even broader representation to the Court as ASI sought to avoid summary judgment based on preemption of all tort claims, to wit: ASI is not claiming or asserting any claims based upon misappropriation of any confidential information:

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<sup>2</sup> Under the Idaho Trade Secrets Act, the term "misappropriation" includes any wrongful "[a]cquisition," "[d]isclosure" or "use" of a trade secret of another. Idaho Code § 48-801(2)(a)-(b).



THE COURT: . . . May that be the last word, Mr. Zarian?

MR. ZARIAN: Just one bullet point, Your Honor, if I may.

***Simply that for the avoidance of doubt, ASI does not claim or assert any claims based on misappropriation of confidential information as opposed to trade secrets. That is also not a part of the claims at this point.***

Declaration of Gerald T. Husch Re: Zilog's Pretrial Motions ("Husch Dec"), Ex. A (9/26/14 Hearing Transcript), 71:1-8 (emphasis added).

Consistently with ASI's position, ASI's expert witness, Stephen Holland, indicated in his deposition on October 30, 2014, that he found no evidence that any meaningful ASI confidential information had been transferred to Zilog. Husch Dec, Ex. M (Holland Dep).<sup>3</sup>

**A. American Semiconductor's Tortious Interference with Economic Expectancy.**

Zilog argued that it was entitled to summary judgment because ASI's economic expectancy was doing business with Zilog, which claim fails because Zilog is not a stranger to the prospective economic relationship with which Zilog allegedly interfered. *See* Zilog SJ Memo., p. 4 (citing *Cantwell v. City of Boise*, 146 Idaho 127, 138, 191 P.3d 205, 216 (2008)).

American Semiconductor responded, arguing that ASI is not asserting tortious interference based upon Zilog's interference with an economic opportunity between ASI and Zilog. ASI argued that "***ASI's tortious interference with prospective economic advantage claim*** concerns the economic expectancy ASI had for Roberts, Yearsley, Tiffany, Lloyd and Perryman's continued employment and loyalty and, as such, ***is not based upon ASI's***

---

<sup>3</sup> Mr. Holland testified that the only ASI confidential information Sage transferred to Zilog was information pertaining to the application of the Innovative Semiconductor USB PHY at ASI, that Zilog did not use the Innovative Semiconductor USB PHY in Zilog's product, and that he could not testify that ASI sustained any damages by that transfer of information. Husch Dec, Ex. M (Holland Dep), 4:15 – 5:13 and 6:2-20.

*prospective relationship with Zilog.*” ASI Opp. Memo., p. 18 (emphasis added). *See also id.*, at p. 3 (“ASI is also pursuing a claim against Zilog for tortious interference with ASI’s prospective economic interest in ASI’s employment relationships with the individual defendants, Russell Lloyd and Evelyn Perryman.”).

At the September 26, 2014 hearing, ASI’s counsel affirmed this position to the Court by representing that ASI’s tortious interference with economic expectancy claim against Zilog is not based upon an alleged prospective economic relationship with Zilog:

MR. ZARIAN: . . . Zilog, it is said, was not a stranger to this economic expectancy but it needs to be clarified, Your Honor, that the economic relationship again at issue we submit is mischaracterized by Zilog. It is not -- well, the focus is on the relationship between ASI and its own employees. And it is that relationship to which Zilog was a third party that was in fact interfered with here and interfered with tortiously. ASI is seeking recovery against Zilog for losses caused by the wrongful interference with ASI’s employment relationships. *And again, Zilog was a third party to that. It is not based upon any prospective relationship or actual relationship with Zilog itself.*

Husch Dec, Ex. A (9/26/14 Hearing Transcript), 64:3-18 (emphasis added).

At the September 26th hearing, the Court granted ASI’s Motion for Voluntary Dismissal (filed August 19, 2014) of its Sixth Cause of Action (Idaho Trade Secret Act Violation) and Eleventh Cause of Action (Injunctive Relief) that ASI had asserted against Zilog in ASI’s Second Amended Complaint and Demand for Jury Trial. *See* Husch Dec, Ex. A (9/26/14 Hearing Transcript), 72:24 – 73:8 (Sixth Cause of Action), and 90:1-9 (Eleventh Cause of Action). At the same hearing, the Court granted Zilog’s Motion for Summary Judgment on ASI’s Eighth Cause of Action (Unjust Enrichment) and Tenth Cause of Action (Declaratory Relief) against Zilog. *Id.*, 72:24 – 73:8 (Sixth Cause of Action), 86:17-22, and (Eighth Cause of Action), 88:16-22 (Tenth Cause of Action). However, the Court denied Zilog’s Motion for

Summary Judgment on the two tortious interference claims alleged in ASI's Fifth Cause of Action (Tortious Interference with Prospective Economic Advantage and Contract).

### III. ARGUMENT

In an effort to avoid summary judgment, ASI has represented to the Court that:

(1) ASI is not asserting any claim based on a misappropriation of its confidential information and  
(2) ASI is not asserting tortious interference with economic expectancy based on ASI's expectancy of performing design services for Zilog. Therefore, ASI should not be permitted to pursue at trial in this action any theory that (1) Zilog wrongfully acquired, disclosed or used any ASI trade secret or other confidential information, or (2) ASI had an "economic expectancy" based on a prospective relationship with Zilog.

**A. ASI Is Judicially Estopped from Introducing Evidence Inconsistent with Its Representations to This Court in Response to Zilog's Motion for Summary Judgment.**

Judicial estoppel is the concept "that a litigant who obtains a judgment, advantage, or consideration from one party through means of sworn statements is judicially estopped from adopting inconsistent and contrary allegations or testimony, to obtain a recovery or a right against another party, arising out of the same transaction or subject matter." *In re Pangburn*, 154 Idaho 233, 241-242, 296 P.3d 1080 (2013) citing *Heinze v. Bauer*, 145 Idaho 232, 235, 178 P.3d 597, 600 (2008) (citing *Loomis v. Church*, 76 Idaho 87, 93-94, 277 P.2d 561, 565 (1954)). It "precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position." *Pangburn*, 154 Idaho at 241-42 citing *McKay v. Owens*, 130 Idaho 148, 152, 937 P.2d 1222, 1226 (1997). It is intended to prevent parties from playing fast and loose with the legal system. *A & J Constr. Co. v. Wood*,

141 Idaho 682, 685, 116 P.3d 12, 16 (2005); *see also* 31 C.J.S. *Estoppel and Waiver* § 186 (2012).<sup>4</sup>

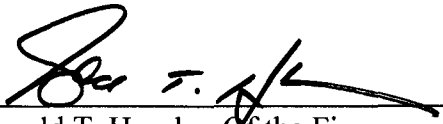
Here, in both its briefing and oral argument, American Semiconductor ardently and repeatedly represented to the Court that (1) it was not seeking to pursue a claim for tortious interference based on confidential information, and (2) American Semiconductor's claim for tortious interference with economic expectancy did not relate to ASI's alleged expectancy of performing design services for Zilog. These representations aided American Semiconductor in defeating summary judgment, such that a subsequent inconsistent position would violate the doctrine of judicial estoppel.

#### IV. CONCLUSION

Based upon the foregoing, Zilog respectfully requests the Court to grant Zilog's Motions in Limine.

DATED this 31st day of October, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

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<sup>4</sup> See also *Magic Valley Truck Brokers, Inc. v. Meyer*, 133 Idaho 110, 116-17, 982 P.2d 945, 951-52 (Ct. App. 1999) (“quasi estoppel applies when a person asserts a claim or position inconsistent with a position previously taken, with knowledge of the facts and of his or her rights, to the detriment of the person seeking application of the doctrine.”) (internal citations omitted).

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2014, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF ZILOG'S MOTIONS IN LIMINE RE: (1) MISAPPROPRIATION OF ASI'S CONFIDENTIAL INFORMATION AND (2) ASI'S ALLEGED PROSPECTIVE ECONOMIC EXPECTANCY WITH ZILOG** to be served by the method indicated below, and addressed to the following:

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COOPER & LARSEN, CHARTERED  
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P.O. Box 4229  
Pocatello, ID 83205-4229  
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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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Chad E. Bernards  
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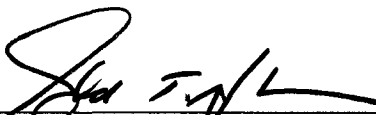
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Gerald T. Husch

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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 5

OCT 31 2014

CHRISTOPHER D. RICH, Clerk  
By PATRICK McLAUGHLIN  
DEPUTY

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*


**PLAINTIFF'S MOTION IN LIMINE  
NO. 8 RE: VOLUNTARILY  
DISMISSED CLAIMS**

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully moves for an order *in limine* precluding testimony that may be offered by certain defendants claims not at issue in this case, particularly those subject to its motion for voluntary dismissal which was granted by the Court. This request for relief is made pursuant to Rules 402 and 403 of the Idaho Rules of Evidence.

In support of the foregoing motion, ASI relies upon this motion, the accompanying memorandum, the accompanying Declaration of Kennedy K. Luvai in Support of Plaintiff's Motions *in Limine*, the pleadings and records on file in this matter, all matters that the Court may take judicial notice, such matters as may be presented by counsel at or prior to any hearing, and upon such other evidence or argument as may be considered by the Court prior to ruling on this motion.

DATED this 31st day of October, 2014.

PARSONS BEHLE & LATIMER

By   
\_\_\_\_\_  
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 31st day of October, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

<p>Gary L. Cooper COOPER &amp; LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com</p>
<p>Daniel W. Bower Chad E. Bernards STEWART TAYLOR &amp; MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: dbower@stm-law.com chad@stm-law.com suzie@stm-law.com</p>
<p>Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK &amp; FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com</p>

*Kennedy K. Luvai*

Kennedy K. Luvai



ORIGINAL

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 5

OCT 31 2014

CHRISTOPHER D. RICH, Clerk  
By PATRICK McLAUGHLIN  
DEPUTY

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Kennedy K. Luvai, ISB No. 8824  
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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION *IN LIMINE*  
NO. 8 RE: VOLUNTARILY  
DISMISSED CLAIMS**

RELATED COUNTER ACTIONS

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following memorandum in support of the accompanying motion *in limine* concerning claims not at issue in this case, particularly those claims that were the subject of its motion for voluntary dismissal.

### **BACKGROUND**

Prior to the parties' briefing on their respective dispositive motions in this case, and in the interest of streamlining issues for trial, ASI moved to voluntarily withdraw certain of its claims without prejudice and with each party bearing its own fees and costs. *See* American Semiconductor, Inc.'s Motion for Voluntary Dismissal of its Claims for Misappropriation of Trade Secrets, Improper Appropriation of Name, Consumer Protection Act, and Injunctive Relief (filed, Aug. 19, 2014) (the "Motion for Voluntary Dismissal").

The Court took up the Motion for Voluntary Dismissal on September 26, 2014. Based upon the papers filed in support of and in objection to the Motion for Voluntary Dismissal, the oral argument of counsel at the hearing, and the findings made by the Court on the record at the hearing, the Court granted ASI's request for voluntarily dismissal without prejudice.

As a result, the Court dismissed certain claims without prejudice, but reserved the issue of fees and costs as to each until all pending claims are resolved, namely: (a) Idaho Trade Secrets Act Violation against all defendants (Sixth Cause of Action); (b) Improper Appropriation of American Semiconductor's Name against the Sage Defendants (Seventh Cause of Action); (c) Consumer Protection Act Violation against the Sage Defendants (Ninth Cause of Action); and (d) Injunctive Relief against all defendants (Eleventh Cause of Action) (the "Dismissed Claims").

By this motion, ASI seeks to preclude defendants from introducing evidence or offering arguments concerning ASI's voluntary dismissal of the Dismissed Claims or the claims themselves.

### **LEGAL STANDARD**

Motions *in limine* are now staples of pre-trial practice, and with good reason. Indeed, the Idaho Court of Appeals has explained the purpose of motions in limine by stating that:

[d]espite being a relatively recent phenomenon, the motion in limine has obtained widespread acceptance in state and federal courts. See Annotation, Motions to Exclude Prejudicial Evidence, 63 A.L.R.3d 311 (1975). [Idaho has] recognized the importance of the motion. See *Johnson v. Emerson*, 103 Idaho 350, 647 P.2d 806 (Ct.App.1982). It enables a judge to rule on evidence without first exposing it to the jury. It avoids juror bias occasionally generated by objections to evidence during trial. The court's ruling on the motion enables counsel on both sides to make strategic decisions before trial concerning the content and order of evidence to be presented. See E. CLEARY, *McCORMICK ON EVIDENCE* § 52 (3d ed. 1984) (hereinafter *McCORMICK*); M. GRAHAM, *HANDBOOK OF FEDERAL EVIDENCE* § 103.8 (2d ed. 1986) (hereinafter *GRAHAM*).

*Davidson v. Beco Corp.*, 733 P.2d 781, 784, 112 Idaho 560, 563 (Idaho App. 1986) *rev'd and aff'd* 114 Idaho 107, 753 P.2d 1253 (1987).

The trial court has broad discretion in the admission and exclusion of evidence and its decision to admit such evidence will be reversed only when there has been a clear abuse of that discretion. *State v. Howard*, 135 Idaho 727, 731, 24 P.3d 44, 48 (2001); *Perry v. Magic Valley Regional Medical Center*, 134 Idaho 46, 51, 995 P.2d 816, 821 (2000).

### **ARGUMENT**

Evidence or arguments suggesting that ASI's voluntary dismissal of the Dismissed Claims are somehow reflective of the remaining claims are not pertinent, in any way, to those remaining claims.

Indeed, such evidence or arguments would serve only to confuse the jury and any suggestion that the dismissal can be somehow interpreted to speak to the merits of the unrelated remaining claims would be unduly prejudicial.

Similarly, any evidence or arguments relating to the merits of the Dismissed Claims themselves are irrelevant and would be unduly prejudicial at this time.


As a result, ASI requests that any such evidence or argument be excluded from trial pursuant to I.R.E. 402 which provides that evidence is not relevant is not admissible at trial. To the extent such evidence can be deemed to have some fleeting relevance, it may still be excluded under I.R.E. 403 because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay [or] waste of time."

### **CONCLUSION**

For the foregoing reasons, the Court should issue an order precluding defendants from introducing any evidence or argument related to the ASI's voluntary dismissal of the Dismissed Claims or the claims themselves.

DATED this 31st day of October, 2014.

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

### CERTIFICATE OF SERVICE

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Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. S

OCT 31 2014

CHRISTOPHER D. RICH, Clerk  
By PATRICK McLAUGHLIN  
DEPUTY

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

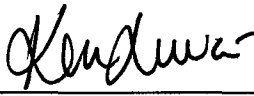
**PLAINTIFF'S MOTION IN LIMINE  
NO. 11 RE: UNDISCLOSED  
LICENSES**

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully moves for an order *in limine* precluding defendants from introducing evidence or making arguments concerning certain undisclosed licenses. This request for relief is made pursuant to Rules 402 and 403 of the Idaho Rules of Evidence and Rule 26 of the Idaho Rules of Civil Procedure.

In support of the foregoing motion, ASI relies upon this motion, the accompanying memorandum, the accompanying Declaration of Kennedy K. Luvai in Support of Plaintiff's Motions *in Limine*, the pleadings and records on file in this matter, all matters that the Court may take judicial notice, such matters as may be presented by counsel at or prior to any hearing, and upon such other evidence or argument as may be considered by the Court prior to ruling on this motion.

DATED this 31st day of October, 2014.

PARSONS BEHLE & LATIMER

By \_\_\_\_\_  
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

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<p>Gary L. Cooper COOPER &amp; LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com</p>
<p>Daniel W. Bower Chad E. Bernards STEWART TAYLOR &amp; MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: dbower@stm-law.com chad@stm-law.com suzie@stm-law.com</p>
<p>Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK &amp; FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com</p>



Kennedy K. Luvai



OCT 31 2014

CHRISTOPHER D. RICH, Clerk  
By PATRICK McLAUGHLIN  
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*Attorneys for Plaintiff and Counterdefendant  
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Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION *IN LIMINE*  
NO. 11 RE: ZILOG'S UNDISCLOSED  
LICENSES**

RELATED COUNTER ACTIONS

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following memorandum in support of the accompanying Motion *in Limine* No. 11 to preclude defendants from introducing evidence or making arguments concerning Zilog's undisclosed licenses as further discussed below.

### **BACKGROUND**

Shortly after ASI filed its Second Amended Complaint, ASI served document requests on defendant Zilog, Inc. ("Zilog") seeking production of, among other records, licensing agreements that Zilog executed with third party tool providers including, but not limited to, CAST, Inc. ("CAST"), Synopsys, Inc. ("Synopsys") and Cadence Design Systems, Inc. ("Cadence"). *See* Declaration of Kennedy K. Luvai in Support of Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition (filed Apr. 18, 2014), Exs. M and O (collectively, "Document Requests").

In response to the Document Requests, Zilog produced an "evaluation" license agreement from CAST – but flatly refused to produce any pertinent "final" license, even though its existence had been confirmed by Zilog at deposition. *See* Memorandum in Support of Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition (filed Apr. 18, 2014) ("Motion to Compel"), at pp. 5-7.<sup>1</sup> Zilog also refused to produce any licensing agreements it entered into with Cadence or Synopsys. *Id.*

Because Zilog refused to produce any Cadence or Synopsys license agreements, ASI was forced to serve third party subpoenas on these companies. Motion to Compel, at p. 7. Cadence produced certain Zilog licensing agreements that appear to suggest that Zilog did *not* have a

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<sup>1</sup> For the convenience of the Court and the other parties, this memorandum along with ASI's reply briefing in support of the same motion to compel are attached to the accompanying Declaration of Kennedy Luvai in Support of Plaintiff's Motions *in Limine* as Exhibits K and L.

valid Cadence license available for *Sage* to use in connection with the design engineering services at issue in this litigation. For its part, Synopsys refused to produce any agreements and instead insisted that ASI obtain those records from Zilog. *See Reply in Further Support of Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition (filed Apr. 18, 2014) ("Reply Memorandum")*, at pp. 5-7.

Because Zilog refused to produce its license agreements (including at least one that it invoked during the course of this litigation), and because Synopsys refused to produce any license agreements showing that Zilog had any tool licenses, ASI was forced to seek the Court's intervention. *See Motion to Compel*, at pp. 5-7. Zilog opposed the motion based on the (spurious) argument that "Cadence, CAST and Synopsys agreements contain confidentiality provisions that prohibit disclosure of the terms of the agreements. . . ." *See Zilog, Inc.'s Memorandum in Opposition to Motion to Compel (filed, Apr. 28, 2014)*. Ironically, in support of arguments during this litigation, Zilog has used verbatim quotes from at least one Cadence license agreement – while refusing (after repeated requests) to produce it. *See Reply Memorandum*, at p. 6.

On May 2, 2014, the Court heard oral argument on ASI's motion to compel. *See Order Re: Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition (filed Jun. 18, 2014) ("Discovery Order")*. Based on the objections made by Zilog, the Court ultimately denied ASI's motion to compel Zilog to produce any license agreements it entered into with Cadence, Synopsys and CAST. *Id.*

Now, with Zilog having refused to produce any license agreements (other than the CAST "evaluation" agreement), Zilog and the Sage Defendants have, with no hint of irony, sought

themselves to advance defenses and arguments that *expressly rely* on those same license agreements. These arguments and evidence, summarized below, should be precluded at trial.

*First*, the Sage Defendants have repeatedly argued that the licensed design tools that David Roberts (“Roberts”), Gyle Yearsley (“Yearsley”), William Tiffany (“Tiffany”) and Evelyn Perryman (“Perryman”) used during their undisclosed “moonlighting” were “proprietary” to Zilog, and that ASI could not have done the work at issue because it did not have access (or licenses) to those tools. *See e.g.* Memorandum Opposing ASI’s Motion for Summary Judgment Re: Claims Against Roberts, Yearsley, Tiffany and Sage Silicon Solutions (filed, Sept. 12, 2014) (“Sage’s Memorandum Opposing MSJ”), at p.13-14, 31; *see also* Luvai Decl., Ex. I, Lay and Expert Witness Disclosure of Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany (“Sage’s Witness Disclosures”), at pp. 4-6, 9, 13-19. Of course, defendants can advance these arguments with impunity, because neither Zilog nor the Sage defendants have produced any license agreements that would allow ASI to test these arguments. Indeed, defendants have not provided so much as a list, cost or any other documentation for any license.

*Second*, seeking to avoid liability for ASI’s interference claims, both the Sage Defendants and Zilog have argued that Zilog would not have contracted with ASI because the total project price that ASI would likely have quoted (if Zilog had dealt with ASI directly) would have been too high. *See e.g.* Declaration of David R. Staab (filed, Jul. 14, 2014). As ASI has demonstrated, a significant portion of that total project quote reflects the costs that ASI would have incurred in order to obtain the requisite licenses to successfully complete the project. *See e.g.* Opposition to Motion for Summary Judgment by Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany (filed, Sept. 12, 2014), at pp. 15-16 (explaining how Mr. Staab’s unsupported and self-serving assertions regarding hourly rates conveniently

ignore various costs components that ASI factored into the total project price, including costs associated with licensing of necessary tools). Again, however, ASI is faced with arguments advanced in the absence of any license agreements, lists, cost information, or other documentation about the licenses from Zilog or the Sage defendants. Such evidence would have allowed ASI to make comparisons and specific arguments about the terms, conditions and costs associated with the license agreements (sight unseen) upon which defendants now rely.

Third party tools were undoubtedly used in connection with the project at issue. They necessarily would have been purchased by Zilog or Sage to do the work that was done, and they were surely a component of the cost incurred on the project. While ASI's total project price presupposes that access to Zilog's third party tools was not feasible or desired, that is a valid assumption based on the expired Cadence license and the absence of any other license agreements. However, having refused to produce any license agreements, defendants would now make broad claims and assert defenses referring to those same agreements. This motion follows.

### **LEGAL STANDARDS**

Motions *in limine* are now staples of pre-trial practice, and with good reason. Indeed, the Idaho Court of Appeals has explained the purpose of motions in limine by stating that:

[d]espite being a relatively recent phenomenon, the motion in limine has obtained widespread acceptance in state and federal courts. See Annotation, Motions to Exclude Prejudicial Evidence, 63 A.L.R.3d 311 (1975). [Idaho has] recognized the importance of the motion. See *Johnson v. Emerson*, 103 Idaho 350, 647 P.2d 806 (Ct.App.1982). It enables a judge to rule on evidence without first exposing it to the jury. It avoids juror bias occasionally generated by objections to evidence during trial. The court's ruling on the motion enables counsel on both sides to make strategic decisions before trial concerning the content and order of evidence to be presented. See E. CLEARY, McCORMICK ON EVIDENCE § 52 (3d ed. 1984) (hereinafter McCORMICK); M. GRAHAM, HANDBOOK OF FEDERAL EVIDENCE § 103.8 (2d ed. 1986) (hereinafter GRAHAM).

*Davidson v. Beco Corp.*, 733 P.2d 781, 784, 112 Idaho 560, 563 (Idaho App. 1986) *rev'd and aff'd* 114 Idaho 107, 753 P.2d 1253 (1987).

The trial court has broad discretion in the admission and exclusion of evidence and its decision to admit such evidence will be reversed only when there has been a clear abuse of that discretion. *State v. Howard*, 135 Idaho 727, 731, 24 P.3d 44, 48 (2001); *Perry v. Magic Valley Regional Medical Center*, 134 Idaho 46, 51, 995 P.2d 816, 821 (2000).

### **ARGUMENT**

#### **A. DEFENDANTS' USE OF THE LICENSE AGREEMENTS AT ISSUE APPEARS TO HAVE BEEN BEYOND ANY AUTHORIZED SCOPE**

By all indications available to ASI, it appears that Zilog used the CAST, Cadence and Synopsys tools beyond the restrictions and outside the limitations common to these types of licenses in the industry. *See* Expert Witness Report of Stephen Holland<sup>2</sup> (submitted, Aug. 4, 2014) (the "Holland Report"), at pp. 43-44 (opining that "Such licensing agreements tend to include various restrictions on the use of the products at issue including (a) limitations as to the authorized sites of use, (b) prohibitions against assigning or transferring duties in the agreement to other parties without the licensor's permission, (c) prohibitions against sublicensing duties under the agreement or relocating the products at issue without the licensor's permission").

For this reason, and according to ASI's industry expert, companies in the industry often have an incentive to use EDA design tools beyond the scope of the license agreement's terms, because it can avoid otherwise substantial costs associated with the design process. *Id.* at p. 44.

Surely, having resisted ASI's discovery efforts, defendants should not be allowed now to suggest or contend, at trial, that their uses of the license agreements at issue were entirely proper.

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<sup>2</sup> Mr. Holland is ASI's industry and technical expert.

As discussed below, the only plausible inference that ASI can draw from defendants' apparently unauthorized uses of the license agreements was that they improperly avoided otherwise necessary design-related costs. Of course, having been denied access to the requested license agreements (or other evidence), ASI has been deprived of any opportunity to further probe Mr. Staab's assertion that Zilog would not have hired ASI because its total price, including the costs of design tools, was too high.

Simply put, defendants should not be allowed to use Zilog's failure and refusal to produce probative license agreements both as a sword (to imply that ASI would not have been able to complete the project because of tool availability) and as a shield (to avoid scrutiny of possible extra-contractual uses of tools by Zilog in a manner that made hiring the Sage Defendants as "independent contractors" attractive to the company).

CAST. As noted previously, Zilog produced a CAST "evaluation" license but refused to produce the actual "final" agreement. As part of his engagement, Mr. Holland reviewed the CAST "evaluation" license and noted that it contained provisions typical to such agreements. *Id.* For example, he observed that the CAST "evaluation" license incorporated restrictions as to authorized sites as well as prohibitions against sublicensing, leasing, time sharing, copying or assigning the software absent authorization from CAST. *Id.* Moreover, the authorized site spelled out in the "evaluation" license is not in Boise, but rather at "6800 Santa Teresa Blvd., San Jose, CA." Mr. Holland expected that the "final" agreement would contain similar restrictions. *Id.*

Thus, to the extent the "final" CAST license incorporated provisions common in the industry, any uses by Roberts, Yearsley, Tiffany or Lloyd of the "evaluation" or "final" licenses at locations other than the listed address in San Jose, would appear to indicate violations of those

agreements. *Id.* (opining that, in his experience, EDA design tool licensing agreements do not typically allow for remote use by third parties including, for example, contractors or sub-contractors at their homes or other unidentified locations.). Of course, Zilog could have addressed this issue by producing the "final" agreement with CAST, but it chose not to do so. The only inference to be drawn is that Zilog and the Sage Defendants used the CAST agreement(s) in an unauthorized way and did so in order to avoid legitimate design related costs.

**Cadence.** As noted above, Cadence produced the licensing agreements it had with Zilog. Cadence's production, pursuant to subpoena, included, among other records, (a) a "Fixed Term License Agreement" that it entered into with Zilog as executed in January 2001, Luvai Decl., Ex. M, and, (b) a "Professional Services Agreement" that it entered into with Zilog effective March 29, 2002, Luvai Decl., Ex. N.

As is typical with such agreements, both agreements contained restrictions against assignments of the agreements to third parties. Luvai Decl., Ex. N (further elaborating "dissolution, merger or other reorganization" as assignments for purposes of the "Professional Services Agreement"). Such anti-assignment provisions are typical in the industry. *See Holland Report*, at p. 44.

Further, the "Fixed Term License Agreement" incorporates a "Designated Site" provision restricting the location of usage of the tool or software to a radius within one mile of Zilog's California facility. Luvai Decl., Ex. M.

Here, Zilog has testified, through Mr. Staab, that the Sage Defendants used Cadence tools provided by Zilog. The Sage Defendants, for their part, have testified that they worked on the Zilog project from Idaho. Zilog has also represented to ASI (and thereafter to the Court) that the tools at issue were accessed by Sage defendants in Idaho.



In view of the foregoing, it appears that the "remote" uses of Cadence and other tools likely constituted violations of the Zilog's license agreements, to the extent they actually exist.

**B. HAVING FAILED TO PRODUCE THE REQUESTED LICENSING AGREEMENTS, DEFENDANTS SHOULD BE PRECLUDED FROM OFFERING ANY EVIDENCE OR ARGUMENTS OR MARKING ANY ASSERTIONS BASED ON ALLEGED TERMS OF THE UNDISCLOSED AGREEMENTS**

Having refused to produce the pertinent license agreements, defendants should be precluded from offering any arguments or assertions at trial that are based, in whole or in part, on any terms that appear in any of the undisclosed agreements. Of course, the window for producing new evidence and/or fact witnesses has long closed, and any belated production of agreements now would only result in avoidable delays and manifest prejudice to ASI.

Defendants now seek to make their uses of certain design tools (and ASI's supposed inability to use or access such tools) a key pillar of their defense. However, the defendants have refused to produce any of those agreements, allowing them to make, with impunity, sweeping assertions about Zilog's tools, Sage's access, and ASI's supposedly limited capabilities.

For example, the Sage Defendants make the following assertions without reference to *any* controlling license agreements or cost information about any license agreements:

- "[I]t would have been impossible for ASI to have performed the work that was done by Sage because it could not have access to the tools that Zilog's internal design engineers were using." Sage's Memorandum Opposing MSJ, at p.14.
- "Additionally, the Zilog work required the design engineers to utilize Zilog's proprietary and licensed design tools and network in order to work with Zilog's internal design staff. . ." *Id.*, at p. 31.
- "One had to be on Zilog servers and that could be done from our personal computers at home that were set up to run the software that allowed us to connect to Zilog's server network." Sage's Witness Disclosures, at p. 4.
- "ASI did not have the necessary tools to perform the contract work for Zilog on the Z8F6480/82 . . ." *Id.* at p. 5.

- “Zilog had several licenses available so that engineers could work in parallel to complete the verification tasks . . .” *Id.* at pp. 5-6.
- “Sage had one contract, the contract with Zilog to work on the Z8F6480/82 which ASI could not have performed with its overhead expenses and design tools.” *Id.* at p. 9.
- “Sage defendants could not have done Zilog work on ASI computers or with ASI resources.”<sup>3</sup> *Id.*

In sum, it is abundantly clear that defendants are seeking to assail ASI’s positions in this litigation while, at the same time, relying on undisclosed license agreements. Allowing this would be unfair. Evidently, Defendants previously determined (for strategic reasons) that their interests would be better served by refusing to disclose the license agreements at issue. They should be required now to live with the necessary consequences of those decisions.

Accordingly, ASI requests that the Court preclude defendants from presenting evidence, or from making any argument or assertion at trial, in reliance on any undisclosed licensing agreements including, but not limited to, assertions relating to (a) terms of the licensing agreements, inclusive of costs, assignments and site restrictions, and (b) availability of the tools for use by third parties.

### CONCLUSION


For the foregoing reasons, the Court should preclude defendants from offering arguments or assertion that rely, in whole or in part, on any licensing agreement that remain undisclosed as of the filing of this motion.

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<sup>3</sup> Of course, the notion that Roberts could have accessed Zilog’s server as a Sage member but not as an ASI employee strains credulity. It has not (and presumably) cannot be explained.

DATED this 31st day of October, 2014.

PARSONS BEHLE & LATIMER

By \_\_\_\_\_

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of October, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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Kennedy K. Luvai

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

RELATED COUNTER ACTIONS

CASE NO. CV-OC-1123344

**SAGE DEFENDANTS' OPPOSITION  
TO ASI'S MOTION IN LIMINE NO. 5  
RE: COUNTERCLAIMS FOR  
QUANTUM MERUIT AND UNJUST  
ENRICHMENT**

**ORIGINAL**  
001270

## INTRODUCTION

American Semiconductor, Inc. ("ASI") filed a motion in limine seeking to preclude David Roberts, Gyle Yearsley, William Tiffany, and Sage Silicon Solutions, LLC (collectively "Sage Defendants") from presenting evidence or arguments regarding (i) uncompensated pre-employment work on the SAIC or SBIR proposals, (ii) the 16-bit timer incorporated into ASI products, and (iii) undisclosed technical valuation or expert opinions regarding damages associated with ASI's use of the 16-bit timer. This motion should be denied not only because it effectively attempts to have the Court reconsider its decision denying ASI's motion for summary judgment on these very issues, but also because it not well taken as set forth more fully below.

## LEGAL STANDARD

A motion in limine seeks an advance ruling on the admissibility of evidence. *State v. Young*, 136 Idaho 113, 120, 29 P.3d 949, 856 (2001). Trial courts have broad discretion in determining the admissibility of evidence in cases before them and ruling on motions in limine. *Appel v. LePage*, 135 Idaho 133, 135, 15 P.3d 1141, 1143 (2000). The court exercises discretion in the determination of whether to admit evidence on the basis that unfair prejudice outweighs the probative value of the evidence. *Highland Enterprises, Inc. v. Barker*, 133 Idaho 330, 346-47, 986 P.2d 996, 1012-13 (1999).

Even though motions in limine are predominantly used for the purpose of excluding potentially prejudicial evidence, such motions are also used to determine prior to trial whether certain evidence is admissible. *See generally*, 21 Wright and Graham, Federal Practice and Procedure, § 5037.1 – *Revised Rule 103; Motion in Limine*, pp. 93-94 (2002 Supplement, West Group) (Stating that historically the motion in limine took two forms. The "prophylactic" motion

seeks to exclude evidence, while the "definitive" motion seeks to secure a final ruling on the admissibility of evidence). *See also*, Imwinkelried, Evidentiary Foundations, pg. 11 (4th ed., 1998, Lexis Law Publishing) ("The proponent may make a motion *in limine* to obtain an advance ruling of the evidence's admissibility, but such motions are more frequently used by the opponent to suppress evidence before the trial begins.")

### ANALYSIS AND ARGUMENT<sup>1</sup>

**A. Evidence and argumentation regarding the uncompensated, pre-employment work on the SBIR and SAIC contracts is both relevant and probative.**

ASI alleges that any evidence of pre-employment work by Roberts, Yearsley, and Tiffany that was uncompensated should not be admitted because it is not relevant and is prejudicial. ASI argues that no evidence has been identified in relation to the uncompensated work that was done by Roberts, Yearsley, and Tiffany. However, documents and deposition testimony were produced in the summary judgment motion filed by the Sage Defendants against ASI that identified the work done by the Sage Defendants. *See* Memo in Support of MSJ; Depo Exs 263-69; Roberts Depo, 251:11-254:13; Hackler Depo, 33:1-36:25.

ASI argues that such evidence is not relevant and that it is prejudicial without offering any argument or analysis based on the rules of evidence. Such evidence that is already part of the record or that may be admitted at trial is relevant to the claims of quantum meruit and unjust enrichment as the evidence shows that there was a contract in fact based on the conduct of the parties and that a benefit was conferred upon ASI by Roberts, Yearsley, and Tiffany. ASI's objection would be more appropriately made when any such evidence is actually sought to be

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<sup>1</sup> **Error! Main Document Only.** All documents and depositions referenced herein were made part of the record with the affidavits filed in support of the Sage Defendants' motion for summary judgment or in opposition to the motion to add a claim of punitive damages.

admitted at trial so the purpose and context in which it is being offered can be properly evaluated.

**B. There is evidence of the existence of a 16-bit timer that was incorporated into an ASI test chip and such evidence is admissible.**

In essence, ASI argues (as it unsuccessfully did at the summary judgment stage) that the counterclaimants' can't meet their burden of proof because they don't have [enough] evidence. Rather than allowing ASI to make that conclusion, as it attempt to do, the Court should appropriately allow the jury to make such determination.

ASI attempts to somehow link the idea that because the counterclaimants don't have either enough evidence or the right kind of evidence (in ASI's view) to support their counterclaims, that they should be precluded from offering *any* evidence to support the same. ASI further makes the blanket and unsupportable argument and conclusion that *any* evidence by the counterclaimants is therefore irrelevant and/or that the "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by consideration of undue [or] waste of time." This is simply not the case.

**1. The Sage Defendants should not be precluded from offering evidence or argument as it relates to the 16-Bit timer.**

ASI alleges that there has been no evidence of the 16-bit timer that was developed by ASI and utilized in test chips by ASI. This is not so. There is deposition testimony that was disclosed during the arguments regarding the various motions for summary judgment that specifically addresses the 16-bit timer and how it was utilized by ASI for an Air Force SBIR and for a project with the University of Idaho. Roberts Depo, Vol II, 254:14-260:5. Yearsley Depo, Vol IV, 468:3-472:17. Certainly, ASI cannot and should not be able to preclude the evidence/testimony of the very individuals that developed the subject timer and assisted in incorporating the same into ASI's projects. ASI is free to refute the same with its own witnesses



and/or documents, leaving the jury to do its job in weighing the evidence.

ASI also alleges that the Sage Defendants should be precluded from offering evidence of damages associated with ASI's use of the 16-bit timer. The Sage Defendant can and should be allowed to testify as to the value of the 16-bit timer as intellectual property developed for use in ASI's test chips. The basis that ASI relies on for exclusion of evidence of the 16-bit timer and any damage sustained is that it is not relevant and that it is prejudicial. Not surprising, ASI again does not demonstrate why such evidence is not relevant or why it is prejudicial. Evidence of ASI's use of the 16-bit timer is relevant because it makes the existence of a contract implied in law with ASI and the conferral of a benefit on ASI more likely than if such evidence were not admitted. Such evidence is not unfairly prejudicial and ASI has failed to demonstrate why it would be in this instance. Further, ASI knew that the Sage Defendants were developing intellectual property for profit and they should be allowed to testify as to the value of the intellectual property they developed. Such evidence/testimony is not irrelevant, nor is [unfairly] prejudicial to ASI.

These very issues ASI revisits again were already addressed in the arguments on summary judgment. The Court determined that there were material questions of fact regarding the evidence in the record and denied ASI's motion for summary judgment on the claims for unjust enrichment and quantum meruit. If this motion is granted it would effectively dismiss these claims as the Sage Defendants would not be allowed to present *any* supporting evidence. If ASI wants the Court to reconsider its ruling, the proper procedural method is to file a motion to reconsider. Otherwise, the Court would effectively nullify its prior decision [if this motion is granted].

**2. The Sage Defendants do not intend to offer any technical, valuation or damages expert opinion that has not otherwise been disclosed.**

The Sage Defendants do not intend to offer any undisclosed expert opinion not otherwise


disclosed. However, this does not preclude the Sage Defendants from testifying at trial about the value of the timer which will be done with simple math that is not beyond the knowledge and experience of the average juror as ASI incorrectly presumes.

### CONCLUSION

For the above stated reasons, the motion should be denied.

DATED this 7<sup>th</sup> day of November, 2014.

COOPER & LARSEN

  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of November, 2014, I served a true and correct copy of the foregoing to:

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Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**SAGE DEFENDANTS' OPPOSITION  
TO ASI'S MOTION IN LIMINE NO. 8  
RE: VOLUNTARILY DISMISSED  
CLAIMS**

RELATED COUNTER ACTIONS

**ORIGINAL**

## INTRODUCTION

ASI argues that Defendants should be precluded from introducing any evidence regarding the dismissal of certain claims ("Dismissed Claims"), as well as "any evidence or arguments relating to the merits of the Dismissed Claims themselves . . . ." Memorandum in Support of Plaintiff's Motion in Limine No. 8 RE: Voluntarily Dismissed Claims, p. 3. The Sage Defendants do not contest that the dismissal of these claims is irrelevant to the jury's determination of the remaining issues. The Sage Defendants agree and do not intend to present evidence to the jury that claims were dismissed, unless the issue is raised by ASI. However, ASI has broadened its motion to include any evidence related to the merits of the dismissed claims. As the underlying facts for each claim, including dismissed claims, all overlap and are often the exact same facts, Defendants oppose ASI's motion as it relates to evidence which may be relevant to both the dismissed claims and the remaining claims.

## LEGAL STANDARD

A trial court's ruling on a motion in limine is subject to that court's discretion. *Gunter v. Murphy's Lounge, LLC*, 141 Idaho 16, 25, 105 P.3d 676, 685 (2005). "The trial court may deny the motion and wait until trial to determine if the evidence should be admitted or excluded." *Id.*

## ANALYSIS AND ARGUMENT

On September 26, 2014, the Court granted ASI's motion to voluntarily dismiss ASI's sixth, seventh, ninth, and eleventh causes of action. The Sixth Cause of Action dealt with Idaho Trade Secrets Act violations alleged by ASI. The Seventh Cause of Action asserted improper appropriation of ASI's name. The Ninth Cause of Action alleged violations of the Consumer Protection Act. And the Eleventh Cause of Action asked the court for injunctive relief. All of the dismissed claims have

connections to the remaining claims in this case. Thus, the Court should withhold judgment on this motion and evaluate the evidence as it is presented at trial.

If the Court were to grant ASI's motion as currently drafted, the parties would be precluded from presenting nearly any evidence at all. The facts of this case and of each claim are all interrelated and are often the same facts. Thus, the same evidence that would have been offered regarding dismissed claims is relevant and probative on the remaining claims. For example, ASI's Eleventh Cause of Action requested injunctive relief from the Court "preventing the Individual Defendants and Sage to continue [sic] from operating or providing services or advertisements for services to third-parties which is in contravention of the Employee Confidentiality Agreement." Second Amended Complaint, p. 19. Evidence relevant to the merits of that claim would include the Employee Confidentiality Agreement, communications between the Sage Defendants and ASI, evidence relating to the Sage Defendants' relationship with Zilog, etc. Granting ASI's motion as written would preclude the parties from offering any evidence at all in this case. This same problem arises with each of the Dismissed Claims. ASI's motion is simply too broad to be granted.

Instead of granting ASI's motion the Court should deny the motion and address each challenged piece of evidence as it is presented at trial. This would allow the Court to evaluate each challenged piece of evidence for relevance instead of imposing a blanket restriction on all the evidence that is relevant to the merits of the Dismissed Claims, which would invariably preclude the admission of relevant and probative evidence that would be helpful to the jury.

### **CONCLUSION**

For the above stated reasons, the Sage Defendants request the Court deny ASI's Motion in Limine No. 8 RE: Voluntarily Dismissed Claims.

DATED this 7<sup>th</sup> day of November, 2014.

COOPER & LARSEN

  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of November, 2014, I served a true and correct copy of the foregoing to:

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GARY L. COOPER

Neville/Grant  
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NO. \_\_\_\_\_  
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NOV 07 2014

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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
 )  
Plaintiff, )

CASE NO. CV-OC-1123344

vs. )

SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, WILLIAM TIFFANY )  
and Defendants DOES I - X, )  
 )  
Defendants. )

**SAGE DEFENDANTS' OPPOSITION  
TO ASI'S MOTION IN LIMINE NO. 11**

RELATED COUNTER ACTIONS )

**ORIGINAL**

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## **INTRODUCTION**

American Semiconductor, Inc. ("ASI") filed Motion in Limine No. 11 seeking to preclude all Defendants from introducing evidence or making arguments regarding Zilog's undisclosed license agreements for engineering tools. ASI does not properly bring the motion under IRCP 37(d). Furthermore, the Court previously denied ASI's motion to compel disclosure of licensing agreements. Zilog did not have a duty to disclose the licensing agreements. More importantly, the Sage Defendants should not be unfairly prejudiced by being prevented from offering evidence or making arguments on the basis that a separate party did not disclose documents. The motion should be denied.

## **RELEVANT LAW**

Rule 34(a) of the Idaho Rules of Civil Procedure governs the production of documents. If a party fails to properly produce documents pursuant to a Rule 34(a) request, Rule 37(d) provides that "the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule." Rule 37(d) only allows for sanctions against the party failing to comply with the discovery rules.

## **ANALYSIS AND ARGUMENT**

This motion is not properly before the Court. ASI is requesting a sanction against all Defendants because Zilog did not produce licenses for design tools. Failure to comply with discovery is governed by IRCP 37(d). Furthermore, in denying ASI's motion to compel Zilog to produce the licensing agreements, the Court has held that Zilog was not required to produce such documents and none of the Defendants should be sanctioned. The law of the case precludes this line of

argumentation for ASI.

Although ASI's motion is not properly before the Court, the substantive issues will still be addressed.

**I. There is no evidence that Sage's use of Zilog tools was a violation of any licensing agreements and this issue is not relevant to any claims or defenses in this case.**

ASI first makes the irrelevant argument that the licensing agreements "appear" to preclude Sage from being able to use Zilog's tools. However, ASI admits that it does not have access to the full licensing agreements. ASI's arguments are only valid "to the extent the 'final' CAST license incorporated provisions common in the industry..." Memo on Motion in Limine No. 11, p. 6. The final agreement is not in the record and there is no evidence that the final license prohibited Zilog contractors from using a virtual private network to access Zilog's tools.

A similar problem occurs with ASI's arguments regarding the Cadence agreement. That agreement states that portions of the licensing agreement, including the term of use is specified in the "Product Quotation" that is supposed to be attached to the licensing agreement. There is not a "Product Quotation" attached to the Cadence agreement. Luvai Decl, Ex M, ¶¶ 1(f), 3(a) and 5(a). This is not a complete agreement. The agreement does not even state what tools are being licensed as that term is supposed to appear in the "Product Quotation." Luvai Decl, Ex M, ¶ 1(f). There is no evidence that this is a license for a tool that was used by any of the Sage Defendants.

The argument that Zilog violated licensing agreements in allowing the Sage Defendants to utilize Zilog tools is not relevant to any claim or defense in this matter. ASI has offered no authority to support the proposition that this is a basis for excluding evidence and arguments at trial that ASI could not have used Zilog's tools. More importantly, ASI's argument supports what the Sage Defendants have previously argued. Assuming for the sake of argument that the Sage Defendants

could not use Zilog's tools, the same argument holds that ASI could not have used Zilog's tools.

ASI's arguments actually support inclusion of the evidence.

**II. Even if Zilog failed to properly disclose licensing agreements for design tools, the Sage Defendants have not violated the discovery rules and should not be prejudiced by any sanction placed on Zilog.**

ASI argues that all Defendants should be precluded from arguing that ASI could not have used Zilog's design tools because Zilog did not produce licensing agreements for the tools used on the Zilog project. The only basis cited by ASI for precluding this evidence and argument is that it would not be "fair." But, as stated above, the Court already determined that Zilog was not required to produce the licensing agreements. Granting the motion would improperly sanction all Defendants because Zilog did not produce documents that a Court order stated Zilog was not required to produce. That would not be fair.

However, even if Zilog is somehow culpable for failing to produce the licensing agreements, it would not be just to prejudice the Sage Defendants and prevent them from presenting evidence and arguments because of a failure of a separate party to comply with discovery requests. Rule 37(b) and (d) limit discovery related sanctions to the "disobedient party" or the "party failing to act." There is no basis in law or equity to prejudice the Sage Defendants because of Zilog's acts or omissions.

As well, there is evidence in the record from the Deposition of Doug Hackler that ASI could not have utilized Zilog's tools. Hackler stated:

Q. Okay. So if Zilog had provided the tools, that would not necessarily have lowered the quote; is that correct?

A. I don't know that it's feasible to make any assessment about Zilog providing tools. That's a very complex area that would have a lot of cost ramifications associated with it.

Q. Do you know whose tools were used in the work that ASI and Zilog did in 2003, in the contract, or interaction that they had?

A. I may have known at the time. I don't know now. So I don't recall.

Q. Why do you say, that you don't know it would have been a feasible assumption for

ASI to assume that Zilog would provide the tools?

A. Tools are generally licensed to a specific site. I don't know that it would have been feasible for Zilog to allocate a tool license to an American Semiconductor site, knowing we're designing projects, other than Zilog, nor would it have been feasible for this kind of pricing to take our entire design team, and segregate them into a Zilog facility, where they would have had access to Zilog tools.

Hackler Depo, 200:11-201:9.<sup>1</sup> This is valid, admissible evidence pursuant to the Rules of Evidence and IRCP 32(a). None of the Sage Defendants arguments referenced on pages 8 and 9 of ASI's supporting memorandum rely on the licensing agreements. The arguments are based on the deposition testimony of Doug Hackler and the Sage Defendants. There is no basis for excluding evidence obtained from ASI employees or that is based on the Sage Defendants personal knowledge.

#### CONCLUSION

For the above stated reasons, the motion should be denied.

DATED this 7<sup>th</sup> day of November, 2014.

COOPER & LARSEN

  
GARY L. COOPER

---

<sup>1</sup> The Hackler deposition became part of the record as part of affidavits filed in support of the Sage Defendants' motion for summary judgment and opposition to ASI's motion for summary judgment.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of November, 2014, I served a true and correct copy of the foregoing to:

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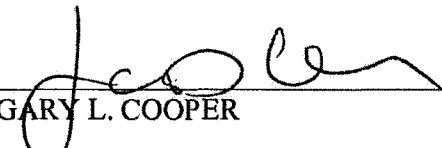
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**NOV 07 2014**

**CHRISTOPHER D. RICH, Clerk**  
By **PATRICK McLAUGHLIN**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG'S JOINDER IN SAGE  
DEFENDANTS' OPPOSITION TO  
ASI'S MOTION IN LIMINE NO. 8 RE:  
VOLUNTARILY DISMISSED CLAIMS**

**ZILOG'S JOINDER IN SAGE DEFENDANTS' OPPOSITION TO ASI'S MOTION IN  
LIMINE NO. 8 RE: VOLUNTARILY DISMISSED CLAIMS - 1**

Client:3623165.1

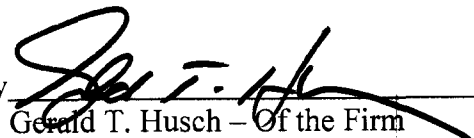
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COMES NOW Defendant Zilog, Inc. ("Zilog"), by and through undersigned counsel of record, and hereby joins in the Sage Defendants' Opposition to ASI's Motion in Limine No. 8 Re: Voluntarily Dismissed Claims, which opposition was filed herein on November 7, 2014.

DATED this 7th day of November, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By

  
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November, 2014, I caused a true and correct copy of the foregoing **ZILOG'S JOINDER IN SAGE DEFENDANTS' OPPOSITION TO ASI'S MOTION IN LIMINE NO. 8 RE: VOLUNTARILY DISMISSED CLAIMS** to be served by the method indicated below, and addressed to the following:

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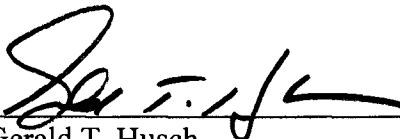
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S OPPOSITION TO ZILOG'S  
MOTION FOR RECONSIDERATION**

ORIGINAL

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following memorandum in opposition to Zilog's Motion for Reconsideration (filed, Oct. 31, 2014) ("Motion for Reconsideration").

### **INTRODUCTION**

The instant Motion for Reconsideration by defendant Zilog, Inc. ("Zilog"), much like the motion for reconsideration filed concurrently by the Sage Defendants, simply rehashes legal arguments found unpersuasive by the Court following its considered review of the earlier briefing and the arguments of counsel made at the September 26, 2014 hearing.

Once the Motion for Reconsideration is carefully scrutinized, an unmistakable pattern emerges involving the mischaracterization of ASI's tortious interference claims and a distortion of key legal authorities. Furthermore, Zilog presents no undisclosed probative facts or new legal arguments relying on controlling authorities that bear on the Court's disposition of Zilog's motion for summary judgment. Ultimately, Zilog's instant motion simply does nothing more than rehash arguments previously made (and rejected by the Court).

Thus, as further discussed below, Zilog has failed to provide the Court with any grounds, in fact or in law, upon which to consider its original considered ruling on Zilog's motion for summary judgment. Under the circumstances, and because the Motion for Reconsideration is without merit, the Court should deny Zilog its requested relief.

### **LEGAL STANDARD**

Rule 11 of the Idaho Rules of Civil Procedure provides that "a motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment." I.R.C.P. 11(a)(2)(B). The decision to grant or deny a request for reconsideration is generally committed

to the sound discretion of the trial court. *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001).

When considering a motion for reconsideration under I.R.C.P. 11(a)(2)(B), the trial court “should take into account any new facts or information presented by the moving party that bear on the correctness of the district court's interlocutory order.” *Rocky Mountain Power v. Jensen*, 154 Idaho 549, 557, 300 P.3d 1037, 1045 (2012) (citing *Coeur d'Alene Mining Co. v. First Nat'l Bank of N. Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990)). Where there have been, for instance, “errors of law or fact” in the issued order, the lack of new evidence does not necessarily preclude a trial court's reconsideration of a previously issued order. See *Johnson v. Lambros*, 143 Idaho 468, 473, 147 P.3d 100, 105 (Ct. App. 2006).

When deciding the motion for reconsideration, the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered. *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012), *reh'g denied*, (Aug. 1, 2012).

### **ARGUMENT**

#### **A. ASI IS NOT PURSUING TORTIOUS INTERFERENCE THEORIES AGAINST ZILOG PREMISED ON MISAPPROPRIATION OF ANY TRADE SECRETS.**

As stated in ASI's papers in opposition to Zilog's motion for summary judgment and as relayed by counsel at the September 26, 2014 hearing, neither of ASI's tortious interference claims is based upon a theory premised on a misappropriation of any trade secrets or related confidential information. See American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion for Summary Judgment (filed, Sept. 12, 2014); Declaration of Kennedy K. Luvai in Support of ASI's Oppositions to Defendants' Pretrial Motions (“Luvai Decl.”), Ex. A, Reporter's Transcript of Proceedings, September 26, 2014 (“Hearing Transcript”), 71:3-71:8.

In particular, ASI does not intend to pursue a tortious interference theory as to *Zilog only* based on the individual defendants' violations of paragraph 2(a) of their respective Employee Confidentiality Agreements (ECAs) governing protection and preservation of trade secrets and related confidential information. However, as further discussed below, the terms of paragraph 3 (disclosure of inventions), paragraph 4 (assignment of inventions) and paragraph 7 (duty not to compete) of the ECAs are and may be predicated on grounds *other* than the misappropriation of trade secrets and related confidential information.

To be sure, ASI acted to streamline this case by clarifying that it did not intend to try its misappropriation of trade secrets claim as a theory in support of its tortious interference claims against Zilog. However, ASI did not disavow (nor was it required to disavow) all of its tortious interference theories and arguments as to Zilog – as Zilog would have the Court believe. Needless to say, ASI did not disavow any theory or argument premised on paragraph 2 with regard to its breach of contract claim against the individual defendants.

**B. THE COURT'S RULING ON SUMMARY JUDGMENT CONCERNING THE BREACH OF CONTRACT CLAIM IS CLEAR AND CORRECT, AND, THUS, NEED NOT BE REVISITED.**

**1. Court is Not Required Each and Every Contention**

Similar to the Sage Defendants in their own motion to reconsider this Court's rulings on summary judgment, Zilog resorts to unfairly recasting ASI's tortious interference claims to suit its ends. Thus, Zilog dismembers ASI's tortious interference with contract claim and somehow ends up with at least *four* separate "claims." Of course, Zilog apparently is referring to different legal or factual theories as opposed to separate claims or causes of action. To be clear, ASI is asserting one tortious interference with contract claim against Zilog premised on multiple legal

and/or factual theories and arguments (in addition to the separate and distinct claim for tortious interference with prospective economic advantage).

The Court duly considered Zilog's arguments in support of its motion for summary judgment and properly found that Zilog was not entitled to a grant of summary judgment with regard to ASI's tortious interference with contract claim. *See* Hearing Transcript, at 80:24-85:11. Having found that Zilog was not entitled to judgment as a matter of law based on one of ASI's legal theories, namely, the interference with the individual defendants duty not to compete obligations as set forth in paragraph 7, the Court simply did not need to wade through each and every other legal argument and factual permutation asserted by Zilog in support of its motion. Zilog does not provide any legal authority standing for the proposition that a trial court is required to consider and rule on every argument permutation by a movant at summary judgment.

Zilog argues that ASI did not address each and every contention or argument Zilog advanced in its original moving papers. In fact, ASI did address the other arguments by Zilog in relation to paragraph 3 (disclosure of inventions) and paragraph 4 (assignment of inventions) – by means including an affidavit of counsel, an affidavit of ASI's retained expert, and the attached expert witness report from Mr. Stephen Holland. Mr. Holland's report, in particular, addressed (from an industry perspective) how the individual defendants' actions implicated the disclosure of inventions and assignment of inventions clauses. *See* Declaration of Kennedy K. Luvai in Support of Plaintiff's Motions *in Limine* (filed, Oct. 31, 2014), Ex. H, Expert Report of Stephen Holland (dated, Aug. 4, 2014), at pp. 30-33. Accordingly, ASI satisfied its obligations as a non-moving party under Rule 56 of the Idaho Rules of Civil Procedure

Moreover, Zilog cannot point to any statement by ASI, either in its briefing or at the hearing, where it expressly stated that it was foregoing or otherwise waiving its entitlement to

pursue all theories or arguments premised on the individual defendants' obligations under paragraph 3 (disclosure of inventions) and paragraph 4 (assignment of inventions). Zilog simply reads too much into statements made that suggest that ASI does not intend to make any "trade secret" arguments and its primary theory rests upon paragraph 7 (duty not to compete). ASI did not, in any way, disavow any and all arguments premised on paragraphs 3 and 4 of the ECAs.

**C. ZILOG'S WORN ARGUMENT THAT THE ITSA PREEMPTS ASI'S TORTIOUS INTERFERENCE WITH CONTRACT CLAIM IS WITHOUT MERIT.**

Without adding anything new to the arguments which the Court previously found unpersuasive, Zilog devotes more than six pages to its argument regarding preemption under the Idaho Trade Secrets Act. By this argument, Zilog mischaracterizes ASI's tortious interference with contract claim and distorts case law.

Zilog's tedious discussion can be reduced to two main points. *First*, Zilog makes the factually unsupported contention that all of ASI's theories in connection with its tortious interference with contract claim seek relief for misappropriation of trade secrets and proprietary information. *Second*, Zilog makes the legally deficient argument that the ITSA preempts ASI's tortious interference with contract claim in its entirety.

The Court specifically considered these arguments in a a detailed and well considered reasoning ruling determining that Zilog was not entitled to judgment as a matter of law based on the record in this case and in light of governing legal authorities. Zilog has cited no additional facts or any change in governing law that should compel the Court to revisit its ruling. Evidently, Zilog simply does not like the original result, but that is no reason to burden the Court with a motion for reconsideration that merely rehashes the same unpersuasive arguments.

**1. ASI's Tortious Interference Theories Related to Paragraph 3 (Disclosure of Inventions), Paragraph 4 (Assignment of Inventions) and Paragraph 7 (Duty Not to Compete) Are Not Premised on Misappropriation of ASI's Trade Secrets or Confidential Information.**

As discussed in subsection (2), the Court already considered Zilog's contentions that ASI's tortious interference with contract claim was preempted and ruled that this claim "require[s] a determination of elements *and facts* which are *distinct and independent* from any other claim alleging misappropriation of trade secrets." Hearing Transcript, at pp. 77:11-77:15 (emphasis added). This is correct, and examination of the paragraphs at issue bears it out.

As a threshold matter, it should be noted that "Inventions" is a contractual term that is defined broadly in paragraph 3 as "inventions, improvements, designs, original works of authorship, formulas, processes, software programs, databases, mask works, and trade secrets." See e.g. Declaration of Kennedy K. Luvai in Support of Plaintiff's Motions *in Limine* (filed, Oct. 31, 2014), Ex. G, Depo. Ex. 25, ¶ 3. Evidently, this definition of "Inventions" extends *well beyond* any "trade secrets" to include fruits of the individuals' respective labors that are neither "trade secrets" nor comprise other proprietary confidential information of ASI. In other words, "Inventions" as defined in the ECAs includes non-proprietary and non-confidential information.

Indeed, "trade secrets and other confidential information" of ASI and its suppliers and customers are *separately* defined as "Secrets" in paragraph 2 of the ECAs. *Id.* at ¶ 2(a). Thus, based on these contractual definitions, there is no question that the concept of "Inventions" as applied in the ECAs is qualitatively different, far broader and, in many instances, distinct and independent from the narrower concept of "Secrets."

**Disclosure of Inventions.** Paragraph 3 relates to the individual defendants' contractual obligations to "promptly disclose" to ASI "Inventions" (as broadly defined) that each "made or conceived or created, either alone or jointly with others, during the term of his[] employment,

whether or not in the course of employment and whether or not such Inventions are patentable, copyrightable or protectable as trade secrets.” *Id.* at ¶ 3. Simply stated, this paragraph imposes an obligation on the employee to inform of ASI the nature and scope of work performed by the employee, particularly when such work is performed outside the employee’s employment relationship with the company.

In pursuing this claim, ASI may seek redress for Zilog’s tortious interference with the obligation the individual defendants had to ASI and which imposed a duty on them to disclose to ASI that the design engineering work they were doing in secret. ASI may also argue, for example, that the individual defendants completely disregarded the conditions and potential requirements of paragraph 3 in the ECAs.

Given the express nature of the obligation flowing from the individual defendants to ASI, and the definitions involved, this theory is *not* premised on the individual defendants’ disclosure of any trade secrets and/or confidential information to Zilog. Rather this theory involves the individual defendants’ failures or refusals to disclose information to ASI concerning other “Inventions,” including designs, processes or software programs that may or may not have been proprietary or confidential but were clearly prepared during employment. It does not involve the individual defendants’ misappropriation of trade secrets or confidential information belonging to ASI.

**Assignment of Inventions.** Paragraph 4 relates to the individual defendants’ contractual obligations to assign to ASI “all Inventions that (i) are developed using equipment, supplies, facilities or trade secrets of [ASI]; ([ii]) result from work performed by [the individual defendant] for [ASI]; or relate to [ASI’s] business or current or anticipated research of development. . .” *Id.* at ¶ 3. Here, ASI may argue that the individual defendants failed to follow



through with their obligations to assign certain "Inventions" they failed to disclose as argued above.

As with the disclosure of inventions provision, the theory ASI will advance at trial will not be dependent, in any way, on an allegation involving the misappropriation or disclosure of any trade secrets or confidential information. Instead, it will be limited, by the contractual restrictions, to failures and potential failures by the individual defendants to formally assign all rights in certain matters to ASI. For example, it is undisputed that the individual defendants performed certain design engineering services for Zilog and that they engaged in a substantial amount of their work *while at ASI*, using the equipment, supplies and facilities of ASI. These have been and remain viable theories for trial.

**Duty Not to Compete.** The individual defendants' obligation under the ECAs not to assist any business or third party in competition with ASI can be found in paragraph 7. *Id.* at ¶ 7. In agreeing to become ASI employees, the individual defendants, and each of them, "[understood] that his[] employment require[d] his[] undivided attention and effort during normal business hours" and that "[w]hile employed, [he] will not without [ASI's] express written consent, provide services to, or assist in any manner, any business or third party which competes with the current or planned business of [ASI]." *Id.*

Based on the clear and unambiguous language of this provision, one may violate this provision simply by working for a competing entity, as the individual defendants did here, and without transferring any secrets or other confidential information to that entity.

In other words, as to the claim for tortious interference with contract against Zilog, this theory is not premised on any misappropriation of trade secrets or confidential information.

**2. ASI's Tortious Interference Theories in Connection with Paragraph 3 (Disclosure of Inventions), Paragraph 4 (Assignment of Inventions) and Paragraph 7 (Duty Not to Compete) are Not Preempted.**

Having devoted a considerable amount of effort mischaracterizing ASI's claim for tortious interference, Zilog then engages in a futile exercise based on a misreading of case law. In a footnote, Zilog complains that in finding that ASI common law tortious interference claims "require a determination of elements *and facts* which are *distinct and independent* of any other claim alleging misappropriation of trade secrets," the Court "effectively (and *erroneously*) rejected the 'nucleus of facts of the case' rule employed by Judge Boyle in Chatterbox and instead applied the minority 'comparison of the elements' test." Motion for Reconsideration, at p. 11, n. 2 (emphasis added). Zilog's assertions of "error" are misplaced, for several reasons.

*First*, the Court's reasoning makes it clear that under either "test" as properly applied, neither of ASI's tortious interference claims as pled are premised on a misappropriation of trade secrets theory. The Court was clear that the ASI's tortious interference claims required *both* (a) a determination of *elements* which are *distinct and independent* of any claim alleging a misappropriation of trade secrets (thus satisfying any so-called comparison of the elements test), *and* (b) a determination of *facts* which are *distinct and independent* of any claim alleging a misappropriation of trade secrets (thus satisfying any so-called nucleus of facts of the case test).

To suit its purposes in desperately seeking to bolster its weak basis for reconsideration, Zilog inexplicably ignores the second half of the Court's reasoning relating to an *absence* of a nucleus of *facts* common to both the tortious interference claims and any claim premised on a misappropriation of trade secrets. Of course, any "error" here lies not with the Court but with Zilog in its misapprehension of the Court's clearly stated reasoning.

*Second*, Zilog's misconstruction of the "nucleus of the facts" rule undermines more than it advances its cause. In so doing, Zilog purports to rely upon *Chatterbox, LLC v. Pulsar Ecoproducts, LLC*, Case No. CV 06-512-S-LMB, 2007 WL 1388183 (May 9, 2007) (Boyle, J.) (citing *Digital Envoy, Inc. v. Google, Inc.*, 370 F.Supp.2d 1025, 1035 (N.D.Cal. 2005) applying the California Uniform Trade Secrets Act ("CUTSA")). Zilog reads too much into Judge Boyle's invocation of *Digital Envoy* because, even under the CUTSA, "preemption is not triggered where the facts in an independent claim are *similar to, but distinct from*, those underlying the misappropriation claim." See *Gabriel Technologies Corp. v. Qualcomm Inc.*, No. 08 CV 1992 MM (POR), 2009 WL 3326631, at \*11 (S.D. Cal. Sept. 3, 2009) (emphasis added).

Thus, the "nucleus of facts" rule is simply not what Zilog assumes it to be. Even in California, the jurisdiction that appears to have the most expansive view of the "nucleus of facts" rule, preemption is not triggered where a plaintiff asserts an independent claim with facts that are similar to but nevertheless distinct from those underlying the misappropriation claim. See *id.*

This approach is consistent with Judge Boyle's analysis in *Chatterbox*:

Although the fraud claim includes the allegation that the information revealed was a trade secret and/or amounted to confidential information, it includes other allegations that Pulsar represented it would keep confidential all information sent to it by Plaintiff in the course of their relationship (regardless of its status as a trade secret). It is this alleged representation of confidentiality, and not the nature of the confidential information, that is critical to Plaintiff's fraud claim. For this reason, and because the comment notes to the UTSA suggest that claims such as this fraud claim may be brought along with a trade secrets claim, Defendant Pulsar's Motion to Dismiss the fraud claim should be denied. See, e.g., *Hecny Transp., Inc. v. Chu*, 430 F.3d 402, 404-05 (7th Cir. 2005) (explaining "the dominant view is that claims are foreclosed only when they rest on the conduct that is said to misappropriate trade secrets," but concluding that "[a]n assertion of trade secret in a customer list does not wipe out claims of theft, fraud, and breach of the duty of loyalty that would be sound even if the customer list were a public record"); *AutoMed Techs., Inc. v. Eller*, 160

F.Supp.2d 915, 922 (N.D.Ill. 2001) (noting that the Illinois trade secrets act "only preempts actions predicated on misuse of secret information," and "[c]ommon law claims based on different theories are still permissible"); *Frantz v. Johnson*, 999 P.2d 351, 358 n. 3 (Nev. 2000) (noting that the Nevada court did not agree that "the UTSA provides a blanket preemption to all claims that arise from a factual circumstance possibly involving a trade secret," and explaining that "[t]here may be future instances where a plaintiff will be able to assert tort claims ... that do not depend on the information at issue being deemed a trade secret, and thus are not precluded by the UTSA"); *Paint Brush Corp., Parts Brush Div. v. Neu*, 599 N.W.2d 384, 392 (S.D. 1999) (finding that a claim for deceit was not preempted because "the alleged deceptive conduct could have taken place whether or not a trade secret was being misappropriated")

*Chatterbox*, 2007 WL 1388183 at \*4.

In sum, it follows from the *Frantz* case cited by Judge Boyle in the passage above that the ITSA does not provide a blanket preemption as to all claims that arise from any factual circumstances that may also involve a trade secret.

### CONCLUSION

For the foregoing reasons, the Court should deny Zilog's motion for consideration in its entirety.

DATED this 7<sup>th</sup> day of November, 2014.

PARSONS BEHLE & LATIMER

By Kennedy K. Luvai

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Kennedy K. Luvai


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7<sup>th</sup> day of November, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S OPPOSITION TO ZILOG'S  
MOTIONS IN LIMINE RE: (1)  
MISAPPROPRIATION OF ASI'S  
CONFIDENTIAL INFORMATION  
AND (2) ASI'S ALLEGED  
PROSPECTIVE ECONOMIC  
EXPECTANCY WITH ZILOG**

ORIGINAL

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following memorandum in opposition to Zilog's Motion in Limine Re: (1) Misappropriation of ASI's Confidential Information and (2) ASI's Alleged Prospective Economic Expectancy with Zilog (filed, October 31, 2014) ("Motions *in Limine*").

### **ARGUMENT**

#### **A. ASI IS NOT PURSUING TORTIOUS INTERFERENCE THEORIES AGAINST ZILOG PREMISED ON MISAPPROPRIATION OF TRADE SECRETS.**

As stated in ASI's papers in opposition to Zilog's motion for summary judgment and as relayed by counsel at the September 26, 2014 hearing, neither of ASI's tortious interference claims is based upon a theory premised on a misappropriation of any trade secrets or related confidential information. *See* American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion for Summary Judgment (filed, Sept. 12, 2014); Declaration of Kennedy K. Luvai in Support of ASI's Oppositions to Defendants' Pretrial Motions ("Luvai Decl."), Ex. A, Reporter's Transcript of Proceedings, September 26, 2014 ("Hearing Transcript"), at 71:3-71:8.

In particular, ASI does not intend to pursue a tortious interference theory as to *Zilog* based on the individual defendants' violations of paragraph 2(a) of their respective Employee Confidentiality Agreements (ECAs) governing protection and preservation of trade secrets and related confidential information. *However*, as further discussed in American Semiconductor, Inc.'s Opposition to Zilog's Motion for Reconsideration (filed concurrently herewith) ("Opposition to Motion for Reconsideration"), the terms of paragraph 3 (disclosure of inventions), paragraph 4 (assignment of inventions) and paragraph 7 (duty not to compete) of the ECAs are and may be predicated on grounds *other* than the misappropriation of trade secrets and related confidential information. In the interest of brevity, ASI hereby incorporates its discussion on the subject as in the Opposition to Motion for Reconsideration.

To be sure, ASI acted to streamline this case by clarifying that it did not intend to try its misappropriation of trade secrets claim as a theory in support of its tortious interference claims against Zilog. However, ASI did not disavow (nor was it required to disavow) all of its tortious interference theories and arguments as to Zilog – as Zilog would have the Court believe. Needless to say, ASI did not disavow any theory or argument premised on paragraph 2 with regard to its breach of contract claim against the individual defendants.

**B. ZILOG'S MOTION *IN LIMINE* CONCERNING ASI'S ECONOMIC EXPECTANCY IS WITHOUT MERIT AND SHOULD BE DENIED.**

In its second motion, Zilog for all intents and purposes seeks a reconsideration of the Court's ruling denying its motion for summary judgment as to ASI's tortious interference with prospective economic advantage claim. In so denying Zilog's motion, the Court stated as follows:

In viewing all of [the] facts in light most favorable to ASI as the nonmoving party in a motion before the Court, this Court cannot find that there is no genuine issue of material fact whether ASI had a valid economic expectancy of contracting with or doing work for Zilog. Accordingly, I am not persuaded that Zilog is entitled to summary judgment on ASI's tortious interference with a prospective economic advantage claim.

Declaration of Kennedy K. Luvai in Support of ASI's Oppositions to Defendants' Pretrial Motions ("Luvai Decl."), Ex. A, Reporter's Transcript of Proceedings, September 26, 2014 ("Hearing Transcript"), at 80:3-80:12.

In reaching its conclusion, the Court noted ASI's characterization of its tortious interference with prospective economic advantage against Zilog as being premised on "the economic expectancy ASI had for Roberts, Yearsley, Tiffany, Lloyd and Perryman's continued employment and loyalty and is not based on ASI's prospective relationship with Zilog." *Id.*, at



77:20-78:1. As has been repeatedly explained to Zilog, it is the economic expectancies that ASI had with these employees that Zilog interfered with resulting in harm to ASI's business. This harm extended beyond the disruption of ASI's relationships with the employees to include the employees' diversion of corporate opportunities properly belonging to ASI, which necessarily included the opportunity to do work for Zilog.

As further set forth in the transcript of the hearing, the Court duly considered Zilog's arguments in opposition including the contention that "ASI's prospective economic advantage for a contractual relationship with Zilog [was] no more than a 'mere hope,'" and that Zilog would not have contracted with ASI for that work in any event. *Id.*, at 79:4-79:12. It was after considering ASI's rejoinder that the Court found that it appeared that "the parties' understanding of the circumstances surrounding ASI's economic expectancy of working with Zilog are vastly different" and, thereafter, ruled that "it [could not] find that there [was] no genuine issue of material fact whether ASI had a valid economic expectancy of contracting with or doing work for Zilog." *Id.*, at 79:23-80:12.

Accordingly, what Zilog seeks under the guise of a motion *in limine* is a reconsideration of the Court's ruling denying its motion for summary judgment as to ASI's tortious interference with the contract claim. The Court heard the arguments for and against the motion, including the statements quoted by Zilog in support of the Motions *in Limine*. Zilog simply does not like the outcome, but that is no basis for a motion *in limine* seeking to preclude the admission of whole swaths of evidence that the Court has effectively determined that the jury should consider.

Therefore, Zilog's motion *in limine* concerning ASI's expectancy of working with Zilog should be denied in its entirety.

**CONCLUSION**

For the foregoing reasons, the Court should deny Zilog's motions *in limine*.

DATED this 7th day of November, 2014.

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of November, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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*Kennedy*

Kennedy K. Luvai

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**REPLY IN FURTHER SUPPORT OF  
PLAINTIFF'S MOTION *IN LIMINE*  
NO. 8 RE: VOLUNTARILY  
DISMISSED CLAIMS**

RELATED COUNTER ACTIONS

ORIGINAL

Plaintiff and counterdefendant American Semiconductor, Inc., by and through its undersigned counsel of record, submits the following reply memorandum in further support of Plaintiff's Motion *in Limine* No. 8 Re: Voluntarily Dismissed Claims ("Motion *in Limine*").

### **REPLY**

By this motion, ASI sought to preclude defendants from introducing evidence or argument as suggesting that ASI's voluntary dismissal of certain of its claims are somehow reflective of the merits of its claims at issue. ASI also sought to preclude evidence or argument relating to the merits of the dismissed claims themselves as irrelevant. In short, the dismissed claims are no longer part of the case and the jury should not be burdened with having to consider such irrelevant claims and issues.

In opposition to the instant Motion *in Limine*, defendants really dig deep and are only able to come up with one attenuated example where evidence pertinent to a dismissed claim (injunctive relief) may be purportedly relevant to some unidentified remaining claims. Sage Defendants' Opposition to ASI's Motion in Limine No. 8 Re: Voluntarily Dismissed Claims (filed, Nov. 7, 2014). Defendants construe ASI's motions far too broadly. Of course, ASI does not seek to preclude defendants from presenting admissible evidence that is pertinent to any of the claims at issue. Defendants, however, cannot show, for example, how facts and evidence pertinent to ASI's dismissed trade secrets claim is relevant to any of the remaining claims.

### **CONCLUSION**

For the foregoing reasons, and as further explained in ASI's moving papers, the Court should grant ASI's instant motion, as appropriate.

DATED this 12th day of November, 2014.

PARSONS BEHLE & LATIMER

By Kennedy K. Luvai

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Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant*

*AMERICAN SEMICONDUCTOR, INC.*

**REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTION *IN LIMINE* NO. 8**

**RE: VOLUNTARILY DISMISSED CLAIMS - 2**

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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Kennedy K. Luvai

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Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**REPLY IN FURTHER SUPPORT OF  
PLAINTIFF'S MOTION *IN LIMINE*  
NO. 11 RE: ZILOG'S UNDISCLOSED  
LICENSES**

ORIGINAL



Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, submits the following reply memorandum in further support of Plaintiff's Motion in Limine No. 11 Re: Undisclosed Licenses ("Motion *in Limine*").

**REPLY**

**A. ASI OBJECTS TO THE UNTIMELY DECLARATION OF DAVID STAAB, SUBMITTED WELL AFTER THE CLOSE OF DISCOVERY, AND MOVES TO PRECLUDE SUCH NEW EVIDENCE FROM BEING PRESENTED AT TRIAL.**

Remarkably, as part of the opposition to the instant motion, Zilog submitted the Declaration of David R. Staab in Opposition to Plaintiff's Motion *in Limine* No. 11: Re: Undisclosed Licenses (filed, Nov. 7, 2014) ("Staab Decl."). With less than three weeks to trial, Mr. Staab's declaration belatedly *and selectively* discloses information that should have disclosed long ago. Of course, by filing the instant motion, ASI was not inviting defendants to selectively re-open fact discovery for defendants' sole benefit and to ASI's clear prejudice.

The bulk of the untimely disclosed information appears in paragraphs 10 through 14 of the declaration where Mr. Staab discusses – without citation to any documents produced or any material in the record – various selected aspects of the Sage Defendants' uses of Zilog's purported licenses. Mr. Staab's failure to reference any documents on the record is a strong confirmation that the information he discusses in the identified paragraphs is new and otherwise undisclosed. Therefore, to the extent that Mr. Staab is disclosing new information not previously disclosed and defendants seek to rely on the same, ASI respectfully submits that such evidence and arguments based thereon should be precluded for failure to disclose or untimely disclosure.

In addition, and as discussed below, ASI has an independent basis for seeking to preclude defendants from relying on this evidence, namely, based on defendants' repeated failure or

refusal to disclose the underlying licenses despite repeated requests (and a motion to compel) from ASI.

**B. DEFENDANTS' OPPOSITIONS NOW CONFIRM THAT THEY INTEND TO INVOKE AND RELY UPON UNDISCLOSED LICENSE AGREEMENTS AS PART OF THEIR DEFENSES TO ASI's CLAIMS FOR RELIEF.**

In opposition to the Motion *in Limine*, defendants argue that the instant motion is somehow not properly before the Court and that ASI is seeking an "improper" sanction. *See* Sage Opposition, at p. 2. Defendants are mistaken. ASI simply requests, and is permitted to request, that the Court exercise its broad discretion governing the regulation of evidentiary matters to preclude defendants from invoking or relying upon evidence that was not disclosed during discovery. Here, of course, the evidence that plaintiff seeks to preclude is the same evidence that defendants persuaded the Court should be withheld from discovery.

Having previously argued to this Court that the licensing agreements at issue have no *conceivable* relevance to any claim or claims, so as to shield them from discovery, defendants now seek to invoke and rely upon, at trial, selected disclosures and unsubstantiated arguments concerning those *same* licensing agreements. Either the licenses are not relevant (as defendants previously argued) or they are indeed relevant (as ASI has repeatedly maintained and defendants now tacitly admit, despite their statements to the contrary). In either event, defendants should not be permitted to switch positions at this time to ASI's prejudice.

Notably, defendants do not deny that they intend to present evidence and arguments based upon provisions of the undisclosed licenses. *See* Memorandum in Support of Plaintiff's Motion *in Limine* No. 11 Re: Zilog's Undisclosed Licenses (filed, Oct. 31, 2014), at pp. 8-9.

Highlighting the duplicity in defendants' new position that the licensing agreements at issue are relevant, Mr. Staab, in his untimely declaration, testifies at length as to the very issues

that Zilog has claimed are not relevant – namely, the availability, use and actual licensing of “CAD software.” Indeed, Mr. Staab testifies about *specific* licensing agreements:

The primary CAD software used by Sage on the Project were those licensed to Zilog by Synopsys, Inc. (“Synopsys”). Zilog’s parent company, IXYS Corporation (“IXYS”), negotiated and obtained a license specifically permitting Dave Roberts, Russell Lloyd, Evelyn Perryman, William Tiffany and Gyle Yearsley, to use the Synopsys CAD software, and Synopsys did not require any additional cost for the inclusion of those individuals in the license.

Staab Decl., ¶ 13.

Mr. Staab then goes on to testify that:

Sage infrequently used other CAD software on the Project, including software licensed to Zilog by Synopsys and by Cadence Design Systems, Inc. (“Cadence”). It would not have made economic sense for Sage to have licensed such software and charged Zilog for the costs of Sage’s licenses, because Zilog could simply have performed such infrequent or spot work in-house under Zilog, Clare or IXYS’s licenses.

*Id.*, at ¶ 14.

Mr. Staab relies makes these assertions with reference to, and based upon, heretofore *undisclosed* information, all as part of Zilog’s assertion that it would have rejected (as too expensive) a “\$238 per hour” proposal from ASI for design or design engineering work, which included costs associated with acquisition of tool licenses. *Id.*, at ¶ 16.

However, the foregoing assertion is one that Mr. Staab and Zilog have made repeatedly during this litigation, and reflects one of Zilog’s primary defenses. The argument highlights the prejudice caused by Zilog’s shielding of these license agreements from discovery, so as to preclude any discovery concerning their terms of use, actual cost, availability for use by third parties (whether Sage or ASI), and other relevant terms and conditions.

Curiously, even as he argues that the license costs for necessary tools would have been exceedingly large for ASI, Mr. Staab fails to allow for *any* licensing costs for the Synopsys tools that Zilog claims it "negotiated and obtained" for use by the Sage Defendants, nor does he include any licensing costs associated with the tools that supposedly used by Clare and not included in Clare's \$95 hourly labor rate. Mr. Staab fails to explain the basis for these distinctions, and Zilog has refused to produce documents or information that might have done so.

Thus, defendants' opposition to the instant motion confirms that they intend to invoke and rely upon undisclosed licensing agreements at trial. That is why defendants have strenuously opposed this motion for an order precluding them from relying on such undisclosed evidence, and why they have decided to selectively disclose (in a discovery vacuum) a few snippets of the (uncorroborated) testimony that Mr. Staab will surely seek to provide to the jury.

ASI's request by this motion is simple and straightforward. At trial, defendants should be precluded from invoking or relying upon any previously undisclosed evidence (as they have signaled they intend to do). ASI does not seek to re-litigate previous discovery motions, but rather to prevent trial by ambush and the attendant prejudice that is sure to follow. *See* Fed.R.Civ.P. advisory committee notes at V ("Discovery frequently provides evidence that would not otherwise be available to the parties and thereby makes for a fairer trial or settlement."); *Dilmore v. Stubbs*, 636 F.2d 966, 969 (9th Cir.1981) (noting that one of the principal goals of the discovery rules is preventing trial by ambush and surprise).

**C. IN FORMULATING REBUTTAL OPINIONS, DEFENDANTS' DAMAGES EXPERT ALSO RELIED UPON INFORMATION EVIDENTLY DERIVED FROM UNDISCLOSED LICENSES NOT PRODUCED DURING DISCOVERY.**

Defendants' anticipated reliance on undisclosed licensing agreements at trial extends to their damages expert, Mr. Dennis R. Reinstein. ASI took the deposition of Mr. Reinstein on

November 5, 2014. *See* Declaration of Kennedy K. Luvai in Support of ASI's Oppositions to Defendants' Pretrial Motions (filed, Nov. 7, 2014), Ex. C, Rough Transcripts Excerpts, Deposition of Dennis Reinstein, November 5, 2014 ("Reinstein Dep.").

At deposition, Mr. Reinstein testified about a conversation he had with Mr. Staab and/or Mr. Monte Dalrymple (another expert) concerning those tools that, in their opinions, would have been "necessary" for the project at issue, and Mr. Reinstein also discussed with them whether Zilog would have had to incur additional costs to make those tools available for the project. *Id.*, 5:13-10:22. Without asking whether the use of any of the tools at issue – by Sage, Roberts, Yearsley, Tiffany, Lloyd and Perryman – was *authorized*, Mr. Reinstein proceeded under the assumption that Zilog would not have needed to incur any additional costs associated with licenses because Sage and the individual defendants were lawfully authorized to use such tools. *Id.*, at 7:6-8:1. This assumption, of course, drives Mr. Reinstein's comparison of relative costs.

While Mr. Reinstein is entitled to make reasonable assumptions in support of his rebuttal opinions, ASI is nevertheless entitled to *test* those assumptions because they have a bearing on his credibility and the reliability of his opinions. Here, Mr. Reinstein did not review the licenses that he ultimately relies upon, nor did he question or discuss with Mr. Staab and/or Mr. Dalrymple whether restrictions contained in the Zilog licenses would have necessitated Zilog to incur additional costs in order to make the same licenses available to the individuals. *Id.*, at 8:2-9:15. Nevertheless, Mr. Reinstein's assumptions are highly questionable, for a number of reasons. For example, as Mr. Reinstein acknowledges, software licenses typically contain restrictions as to the *number of users* or "seats" under a particular license at a particular cost. *Id.* Mr. Reinstein also indicated that he would not be surprised if such licenses also contained *geographical* limitations, *see id.*, a key issue here given that the individual defendants accessed

the tools at issue from Idaho and not from Zilog's California location. Under the circumstances, Sage's and Zilog's assertions regarding the terms of certain licenses (which have never been disclose) cannot be taken at face value, and ASI should not be required to do so. In view of typical limitations incorporated into such licenses, and Zilog's extraordinary efforts to shield them from scrutiny, the actual license terms may very well have impacted overall tool costs.

In sum, Mr. Reinstein makes critical assumptions based on representations made to him by Zilog regarding, not only the terms of the licenses at issue, but also the individuals' uses of the associated tools. Mr. Reinstein intends to present such opinions at trial, therefore, ASI is entitled to test the factual basis underlying the assumptions Mr. Reinstein makes in formulating his opinions. Because ASI has been precluded from doing so, as a consequence of Zilog's tactics and positions taken during discovery, Mr. Reinstein should likewise be precluded from presenting opinions at trial that rely upon undisclosed licenses and related information.

### CONCLUSION

For the foregoing reasons, and as further explained in ASI's moving papers, the Court should grant the instant motion *in limine*.

DATED this 12th day of November, 2014.

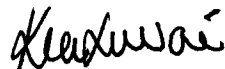
PARSONS BEHLE & LATIMER

By Kennedy K. Luvai  
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**REPLY MEMORANDUM IN  
SUPPORT OF ZILOG'S MOTION  
FOR RECONSIDERATION**

**REPLY MEMORANDUM IN SUPPORT OF ZILOG'S MOTION FOR  
RECONSIDERATION - 1**

Client:3624601.1  
001321  
**ORIGINAL**



## I. INTRODUCTION

In Zilog's Motion for Reconsideration, Zilog has respectfully requested the Court to reconsider its Order denying Zilog's Motion for Summary Judgment as to the Fifth Cause of Action of Plaintiff American Semiconductor, Inc.'s ("ASI's") Second Amended Complaint and Demand for Jury Trial ("SAC" or "Second Amended Complaint"). In its Fifth Cause of Action, ASI has alleged a claim of tortious interference with contract and a claim of tortious interference with prospective economic advantage against Zilog. The former claim, for tortious interference with contract, is essentially three (3) separate claims, each of which is based upon one or more of the provisions of ASI's Employee Confidentiality Agreements (ECAs) with the Individuals. Thus, ASI is asserting (1) a claim for tortious interference with Section 2(a) (Trade Secrets and Confidential Information) of the ECAs, (2) a claim for tortious interference with Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) of the ECAs, and (3) a claim for tortious interference with Section 7 (Duty Not to Compete) of the ECAs. *See* SAC, pp. 4-5, ¶ 18, and pp. 13-14, ¶ 89.

## II. ARGUMENT

### A. **Zilog Is Entitled to Summary Judgment on ASI's Claim for Tortious Interference with Section 2(a) (Trade Secrets and Confidential Information) of the Individuals' ECAs with ASI Because ASI Has Again Admitted that ASI Is Not Pursuing Any Such Claim.**

In American Semiconductor, Inc.'s Opposition to Zilog's Motion for Reconsideration ("ASI's Memo"), ASI asserts several falsehoods and spurious arguments and attributes improper motives to Zilog. However, in a moment of truth, ASI has again conceded that ASI does not intend to pursue a tortious interference theory against Zilog based upon Section 2(a) (Trade Secrets and Confidential Information) of the Individual Defendants' ECAs.

See ASI's Memo at 3 ("[A]SI does not intend to pursue a tortious interference theory as to Zilog only based on the individual defendants' violations of paragraph 2(a) of their respective Employee Confidentiality Agreements (ECAs) governing protection and preservation of trade secrets and related confidential information."). See also, e.g., American Semiconductor, Inc.'s Memorandum in Opposition to Zilog, Inc.'s Motion for Summary Judgment at 17 (ASI stated: ***"[N]either of ASI's tortious interference claims is based upon, seeks [a] remedy for, or in any way relies upon misappropriation of trade secret or other confidential information."***) (emphasis added); Declaration of Gerald T. Husch Re: Zilog's Pretrial Motions ("Husch Dec"), Ex. A (9/26/14 Hearing Transcript), 71:1-8 (ASI's counsel represented to the Court that, ***"Simply that for the avoidance of doubt, ASI does not claim or assert any claims based on misappropriation of confidential information as opposed to trade secrets. That is also not a part of the claims at this point."***) (emphasis added).

In the Fifth Cause of Action of its Second Amended Complaint, ASI has asserted two separate and distinct claims for relief—one for tortious interference with contract and one for tortious interference with prospective economic advantage—in a single so-called "Cause of Action" against Zilog. Despite ASI's procedural irregularity, ASI objects to Zilog's attempt to point out that ASI's tortious interference with contract claim is essentially three claims—one based on Section 2(a) (Trade Secrets and Confidential Information) of the ECAs, a second based on Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) of the ECAs, and a third based on Section 7 (Duty Not to Compete) of the ECAs. Moreover, ASI contends that the Court, having found that Zilog was not entitled to summary judgment on ASI's theory that Zilog tortiously interfered with Section 7, does not need to "wade through" Zilog's argument that it is

entitled to summary judgment on ASI's theories that Zilog tortiously interfered with the other provisions (Section (2)(a) and Sections 3 and 4) of the ECAs.

Zilog respectfully submits that ASI is mistaken. Where, as here, the Court can ascertain what material facts do and do not exist, Zilog submits that the better practice is for the Court to set forth what remains for trial, in accordance with the spirit if not the letter of Idaho Rule of Civil Procedure 56(d), which states:

**Rule 56(d). Case not fully adjudicated on motion for summary judgment.**

If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

In the present case, it is clear that ASI has, on multiple occasions, admitted that it does not intend to pursue a claim against Zilog for tortious interference with Section 2(a) of the ECAs. ASI's own expert, Stephen Holland, testified in his deposition that he found no evidence that any meaningful ASI confidential information had been transferred to Zilog. Husch Dec, Ex. M (Holland Dep).<sup>1</sup> ASI cannot in good faith argue that there is any material fact that would preclude entry of summary judgment on ASI's claim against Zilog for tortious interference with

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<sup>1</sup> Mr. Holland testified that the only ASI confidential information Sage transferred to Zilog was information pertaining to the application of the Innovative Semiconductor USB PHY at ASI, that Zilog did not use the Innovative Semiconductor USB PHY in Zilog's product, and that he could not testify that ASI sustained any damages by that transfer of information. Husch Dec, Ex. M (Holland Dep), 4:15 – 5:13 and 6:2-20.

contract insofar as that claim is based upon Section 2(a) of the ECAs, and Zilog respectfully requests the Court to rule accordingly.

**B. Zilog Is Entitled to Summary Judgment on ASI's Claim for Tortious Interference with Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) of the Individuals' ECAs with ASI Because that Claim Is Displaced by ITSA.**

ASI seeks to avoid summary judgment on its claim that Zilog tortiously interfered with Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) of the Individuals' ECAs with ASI, on the theory that the "Inventions" created or conceived by the Individuals are not trade secrets or confidential information. Whether the "Inventions" at issue are trade secrets or confidential information or some third class of information is of no significance, because *ITSA preempts all tort claims based upon the unauthorized use of any commercially valuable information.* As Judge Boyle stated in *Chatterbox, LLC v. Pulsar Ecoproducts, LLC*, 2007 WL 1388183 (D. Idaho 5-9-2007), "*UTSA preempts all claims based upon the unauthorized use of information, even if the information does not meet the statutory definition of a trade secret.*" *Id.* at \*3 (emphasis added); *see also Hauck Mfg. Co. v. Astec Industries, Inc.*, 375 F. Supp. 2d 649, 659 (E.D. Tenn. 2004) ("*[P]laintiffs alleging theft or misuse of their ideas, data, or other commercially valuable information are confined to the single cause of action provided by the UTSA.*") (emphasis added).

In paragraph 39 of its Second Amended Complaint, ASI alleges as follows:

39. Based on information and belief, the Individuals utilized trade secrets (as defined by the Idaho Trade Secret Act, Idaho Code § 48-801) and contractual "Secrets" and "Inventions" (as defined in the Employee Confidentiality Agreement), owned by or assigned to American Semiconductor, in providing services to Zilog and/or other third parties.

SAC, p. 7, ¶ 39.

In other words, in paragraph 39 of its Second Amended Complaint, ASI claims that the Individuals misappropriated not only ASI's trade secrets, as defined by ITSA, but also ASI's "contractual 'Secrets,'" as defined in Section 2(a) of the ECAs, and ASI's "Inventions," as defined in Section 3 of the ECAs. Furthermore, ASI's allegation in paragraph 39 that the "Inventions" were "owned by or assigned to American Semiconductor" is based on Section 4 of the ECAs. *See* SAC, p. 4, ¶ 18 (quoting ECA § 4, which states: "Employee agrees that all Inventions . . . will be the sole and exclusive property of Employer, and Employee hereby irrevocably assigns all rights in such Inventions to Employer."). *See also* SAC, p. 18, ¶ 126 ("[P]ursuant to the Idaho Trade Secrets Act, American Semiconductor may be entitled to a reasonable royalty for all 'Inventions' incorporated into Zilog products, as such 'Inventions' include trade secrets or other protectable interests owned by American Semiconductor.").

Clearly, ASI is alleging that Zilog tortiously interfered with ASI's contractual rights under Sections 3 and 4 of the ECAs to "Inventions" that were "made or conceived or created" by the Individuals and "owned by or assigned to" ASI. *See* SAC, p. 4, ¶ 18 (quoting ECA § § 3 and 4 to the effect that (a) "Inventions" the Individuals "made or conceived or created" will be ASI's "sole and exclusive property" and (b) each Individual "hereby irrevocably assigns all rights in such Inventions" to ASI); SAC, p. 7, ¶ 39 ("[T]he Individuals utilized . . . 'Inventions' (as defined in the Employee Confidentiality Agreement), owned by or assigned to American Semiconductor, in providing services to Zilog . . . ."); *id.* at pp. 13-14, ¶ 89 ("Zilog tortiously interfered with the Employee Confidentiality Agreements by soliciting or accepting design services from the Individuals in violation of the Individuals' respective contractual obligations to American Semiconductor under the Employee Confidentiality Agreements."). ASI's claim that Zilog tortiously interfered with ASI's contractual rights to the

Individuals' "Inventions" under Sections 3 and 4 of the ECAs, like ASI's claim that Zilog tortiously interfered with ASI's contractual rights to its "Secrets," under Section 2(a) of the ECAs, is displaced by ITSA because it is nothing more than a tort claim based upon misappropriation of ASI's information.

Finally, ASI argues that the "Inventions" as defined in the ECAs includes non-proprietary and non-confidential information." ASI's Memo at 6. As shown above, this argument is irrelevant because ITSA displaces tort claims based on misappropriation of any commercially valuable information. However, the Assignment of Inventions clause in the ECAs clearly state that the Individuals' "Inventions" *"will be the sole and exclusive property of Employer and Employee hereby irrevocably assigns all rights in such Inventions to Employer."* SAC, p. 4, ¶ 18 (emphasis added). Thus, ASI cannot in good faith deny that it claims the Individuals' "Inventions" are ASI's property. If ASI is truly admitting that the Individuals' "Inventions" are not and will never be ASI's property, then ASI has no legitimate business interest underlying the covenants in Sections 3 and 4 and no claim for tortious interference with Sections 3 or 4 of the ECAs. Likewise, if the "Inventions" at issue are "non-confidential," as ASI contends, then the information has no commercial value because ASI has not made any claim that the Inventions at issue are patentable or copyrightable, or sought recovery for patent or copyright infringement.

Based on the foregoing, ASI cannot in good faith argue that there is any material fact that would preclude entry of summary judgment on ASI's claim against Zilog for tortious interference with contract insofar as that claim is based upon Sections 3 and 4 of the ECAs, and Zilog respectfully requests the Court to rule accordingly.

C. **Zilog Is Entitled to Summary Judgment on ASI's Claims for Tortious Interference with Section 7 (Duty Not to Compete) of the Individuals' ECAs with ASI.**

The ASI argues that its claim against tortious interference with Section 7 of the ECAs is not predicated upon a misappropriation or transfer of any ASI trade secret or confidential information because an ASI employee could violate Section 7 simply by working for another company without transferring any secrets or confidential information to that company. ASI's Memo at 8. ASI's argument has no application to this case. In the case at bar, ASI's claim is that Zilog tortiously interfered with Section 7 of the ECAs by inducing the Individuals to provide "design services" to Zilog, that the Individuals provided those "design services" by providing Zilog with "Inventions," in the form of "designs" and other information, that ASI claims to be its "sole and exclusive property" that the Individuals had "irrevocably assign[ed]" to ASI pursuant to Sections 3 and 4 of the ECAs. In other words, under ASI's own theory of this case, the Individuals violated the noncompetition provisions of Section 7 by violating Sections 3 and 4 of the ECAs. This is not a mythical case in which ASI alleges that the Individuals violated Section 7 of the ECAs without providing Zilog with ASI information in violation of Sections 3 or 4 of the ECAs. *See generally* SAC, pp. 13-14, ¶ 89 ("Zilog tortiously interfered with the Employee Confidentiality Agreements by soliciting or accepting design services from the Individuals in violation of the Individuals' respective contractual obligations to American Semiconductor under the Employee Confidentiality Agreements.")

Furthermore, as recently as November 7, 2014, ASI argued that "**David Roberts disclosed [ASI's] confidential information . . . in contravention of paragraph 2(a)**" and stated that it intends to introduce such evidence at trial because "Roberts' conduct in disclosing that information is . . . probative of his disregard of the provisions and obligations of the ECAs."

American Semiconductor, Inc.'s Opposition [to] Motion in Limine to Preclude ASI from Raising the Issue of Improper Use or Misappropriation of Confidential Information by Roberts, Yearsley and Tiffany at 2.

Thus, ASI's claim that Zilog tortiously interfered with ASI's rights under the noncompetition provisions of Section 7 of the ECAs arises out of the same nucleus of facts as ASI's claim that Zilog tortiously interfered with ASI's rights under the confidential information and trade secrets provisions of Section 2(a) and the invention disclosure and assignment provisions of Sections 3 and 4. These tortious interference claims are based solely on the theory that Zilog caused the Individuals to breach their contractual obligations to ASI by providing Zilog with information, in the form of confidential information or in the form of design services or other "Inventions," that ASI claims to be ASI's proprietary information.

Based on the foregoing, ASI cannot in good faith argue that there is any material fact that would preclude entry of summary judgment on ASI's claim against Zilog for tortious interference with contract insofar as that claim is based upon Section 7 of the ECAs, and Zilog respectfully requests the Court to rule accordingly.

### **III. CONCLUSION**

ASI has been taking inconsistent positions in this litigation depending upon what ASI deems to be to its advantage. ASI first represented to the Court that it did not intend to pursue any claim for misappropriation of its confidential information, and ASI now states that it does intend to introduce evidence of such misappropriation. ASI first claimed that the Individuals provided design services to Zilog by using "Inventions" assigned to or owned by ASI, and ASI now claims that it has no proprietary interest in those Inventions. At this stage of the litigation, fundamental principles of fairness and Rule 56(d) require a determination whether

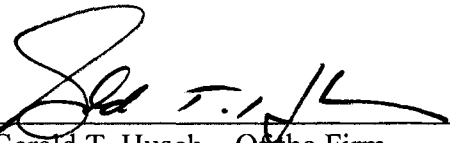


there are material issues of fact that prevent entry of summary judgment for Zilog on ASI's claims against Zilog for tortious interference with (a) Section 2(a) (Trade Secrets and Confidential Information) of the ECAs, (b) Sections 3 (Disclosure of Inventions) and 4 (Assignment of Inventions) of the ECAs, and (c) tortious interference with Section 7 (Duty Not to Compete) of the ECAs. Zilog respectfully submits that all of ASI's tortious interference with contract claims are based upon a common nucleus of fact that has at its core the concept that Zilog tortiously interfered with ASI's contractual rights to "Secrets" or "Inventions" that ASI claims to be its confidential information or other proprietary information. Thus, Zilog respectfully requests the Court to rule that all of ASI's tortious interference with contract claims are displaced by ITSA.

DATED this 12th day of November, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By

  
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November, 2014, I caused a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF ZILOG'S MOTION FOR RECONSIDERATION** to be served by the method indicated below, and addressed to the following:

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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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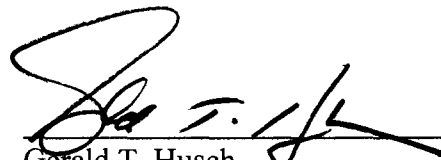
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11/13/14 9H

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**REPLY IN SUPPORT OF ZILOG'S  
MOTIONS IN LIMINE RE:  
(1) MISAPPROPRIATION OF ASI'S  
CONFIDENTIAL INFORMATION AND  
(2) ASI'S ALLEGED PROSPECTIVE  
ECONOMIC EXPECTANCY WITH  
ZILOG**

**REPLY IN SUPPORT OF ZILOG'S MOTIONS IN LIMINE RE:  
(1) MISAPPROPRIATION OF ASI'S CONFIDENTIAL INFORMATION AND (2) ASI'S  
ALLEGED PROSPECTIVE ECONOMIC EXPECTANCY WITH ZILOG - 1**

Client: 3625041.4

001332

ORIGINAL

In Idaho, tortious interference with economic expectancy requires that the party who allegedly interfered be a third party (or stranger) to the economic expectancy. This is a separate and distinct requirement from the concept that the economic expectancy be more than a mere hope. Two of Idaho's appellate courts have affirmed that where the alleged interferer is not a third party to the alleged contract or economic expectancy, a claim for tortious interference with economic expectancy fails. *See, e.g., Cantwell v. City of Boise*, 146 Idaho 127, 138, 191 P.3d 205, 216 (2008), citing *BECO Constr. Co. v. J-U-B Eng'rs*, 145 Idaho 719, 724-26, 184 P.3d 844, 849-51 (2008) (a claim for tortious interference with contractual relations requires proof that the defendant is a stranger to the contract with which the defendant allegedly interfered and to the business relationship giving rise to the contract) (internal citations omitted).

In light of this well-established case law, it is clear that American Semiconductor, Inc. ("ASI") cannot maintain a claim against Zilog for interfering with an economic expectancy ASI had with Zilog because Zilog is not a third party. Consequently, in an attempt to avoid dismissal of its tortious interference with economic expectancy claim, ASI made specific representations to the parties and this Court, in its briefing and at oral argument, that—as it related to Zilog—ASI's tortious interference with economic expectancy claim is based on the economic expectancy ASI had with the continued loyalty of its employees and not with the economic expectancy ASI had with Zilog. Those representations were as follows:

- "ASI IS NOT ASSERTING TORTIOUS INTERFERENCE BASED UPON ZILOG'S INTERFERENCE AS TO AN OPPORTUNITY AS BETWEEN ASI AND ZILOG."<sup>1</sup>

---

<sup>1</sup> ASI's Memorandum in Opposition to Zilog, Inc.'s Motion for Summary Judgment filed September 12, 2014, at 18.

- “ASI’s tortious interference with prospective economic advantage claim concerns the economic expectancy ASI had for Roberts, Yearsley, Tiffany, Lloyd, and Perryman’s continued employment and loyalty and, as such, is not based upon ASI’s prospective relationship with Zilog.”<sup>2</sup>
- “Your Honor, that the economic relationship again at issue we submit is mischaracterized by Zilog. It is not -- well, the focus is on the relationship between ASI and its own employees. And it is that relationship to which Zilog was a third party that was in fact interfered with here and interfered with tortiously. ASI is seeking recovery against Zilog for losses caused by the wrongful interference with ASI’s employment relationships. And again, Zilog was a third party to that. *It is not based upon any prospective relationship or actual relationship with Zilog itself.*”<sup>3</sup>

However, ASI has not identified a single lost corporate opportunity other than its alleged opportunity with Zilog. Because of this, ASI now takes an incompatible position with the representations it made to the Court. *ASI now asserts that its tortious interference with economic expectancy claim “include[s] the employees’ diversion of corporate opportunities properly belonging to ASI, which necessarily included the opportunity to do work for Zilog.”*

American Semiconductor, Inc.’s Opposition to Zilog’s Motions in Limine Re: (1) Misappropriation of ASI’s Confidential Information and (2) ASI’s Alleged Prospective Economic Expectancy with Zilog at 3 (emphasis added).

As provided in Zilog’s initial memorandum, judicial estoppel “precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position.” *In re Pangburn*, 154 Idaho 233, 241-242, 296 P.3d 1080 (2013) citing *McKay v. Owens*, 130 Idaho 148, 152, 937 P.2d 1222, 1226 (1997). ASI made

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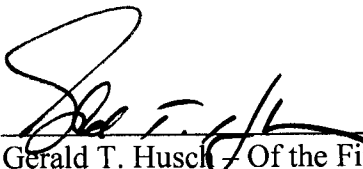
<sup>2</sup> *Id.* at 18.

<sup>3</sup> See Declaration of Gerald T. Husch Re: Zilog’s Pretrial Motions, filed October 31, 2014, Ex. A (9/26/14 Hearing Transcript), 64:3-18 (emphasis added).

specific judicial admissions to this Court when it stated that it "is not asserting tortious interference based upon Zilog's interference as to an opportunity as between ASI and Zilog." ASI made these representations with the intention of defeating summary judgment. ASI should be estopped from changing its position at this late date.

DATED this 12th day of November, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By  \_\_\_\_\_  
Gerald T. Husch Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November, 2014, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF ZILOG'S MOTIONS IN LIMINE RE: (1) MISAPPROPRIATION OF ASI'S CONFIDENTIAL INFORMATION AND (2) ASI'S ALLEGED PROSPECTIVE ECONOMIC EXPECTANCY WITH ZILOG** to be served by the method indicated below, and addressed to the following:

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Gerald T. Husch

**REPLY IN SUPPORT OF ZILOG'S MOTIONS IN LIMINE RE:**  
**(1) MISAPPROPRIATION OF ASI'S CONFIDENTIAL INFORMATION AND (2) ASI'S**  
**ALLEGED PROSPECTIVE ECONOMIC EXPECTANCY WITH ZILOG - 5**

Client:3625041.4

001336

NOV 12 2014

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*Attorneys for Plaintiff and Counterdefendant  
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**NOTICE OF ERRATA RE  
DECLARATION OF KENNEDY K.  
LUVAI IN SUPPORT OF ASI'S  
OPPOSITIONS TO DEFENDANTS'  
PRETRIAL MOTIONS**

RELATED COUNTER ACTIONS

ORIGINAL

001337



PLEASE TAKE NOTICE that plaintiff, American Semiconductor, Inc., by and through its undersigned counsel of record submits this Notice of Errata to make clarification of the Declaration of Kennedy K. Luvai in Support of ASI's Oppositions to Defendants' Pretrial Motions, which was filed on November 7, 2014.

1. It came to the attention of undersigned counsel that Exhibit B was incomplete in that excerpts comprising pages 62 through 65 of the transcript of the deposition of Stephen Holland were inadvertently omitted. Attached hereto is a corrected Exhibit B including the inadvertently omitted pages as intended to be filed on November 7, 2014.

DATED this 12th day of November, 2014.

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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Kennedy K. Luvai

**NOTICE OF ERRATA RE DECLARATION OF KENNEDY K. LUVAI  
IN SUPPORT OF ASI'S OPPOSITIONS TO  
DEFENDANTS' PRETRIAL MOTIONS - 2**



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,        )  
an Idaho corporation,                ) Case No. CV OC 1123344  
  ) Plaintiff,                )  
  ) vs.                        ) DEPOSITION OF  
SAGE SILICON SOLUTIONS, LLC,        ) STEPHEN D. HOLLAND  
an Idaho corporation; ZILOG,        ) TAKEN OCTOBER 30, 2014  
INC., a Delaware corporation;        )  
DAVID ROBERTS, GYLE YEARSLEY,        )  
WILLIAM TIFFANY, and                )  
Defendants DOES I-X,                ) \*\*\*CONFIDENTIAL\*\*\*  
  ) Defendants.                )  
\_\_\_\_\_)  
RELATED COUNTER ACTIONS                )  
\_\_\_\_\_)

REPORTED BY:

SHERI FOOTE, CSR No. 90, RPR, CRR

Notary Public

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1 design representation and the processing that has to  
2 happen on that design representation, then those are the  
3 same -- or Verilog-based mixed-signal designs.

4 Q. Okay, give it to me slowly. What are the  
5 tools that are the same?

6 MR. ZARIAN: Objection, asked and answered.

7 THE WITNESS: Both designs are Verilog-based  
8 mixed-signal designs. The HDL-based representation is  
9 Verilog. So, there's Verilog simulation that is done as  
10 one of the tools. There is Verilog synthesis that is  
11 performed.

12 Q. (BY MR. COOPER) Forgive me, but that sounds  
13 like methodology rather than tools. Am I wrong about  
14 that?

15 A. Well, it's a Verilog synthesizer and a Verilog  
16 simulator.

17 Q. But there are more than one Verilog  
18 synthesizer and Verilog whatever the other word that you  
19 used --

20 MR. ZARIAN: Simulator.

21 Q. (BY MR. COOPER) -- simulator that are used, I  
22 mean the actual tools; correct?

23 A. Yes, there's different tools out there that  
24 are Verilog simulators, different tools that are Verilog  
25 synthesizers.

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1 Q. So, did ASI and Zilog use the same Verilog  
2 synthesizers?

3 MR. ZARIAN: Objection, vague.

4 THE WITNESS: I believe that they did.

5 Q. (BY MR. COOPER) And what tool was that that  
6 they both used?

7 A. It's a tool called "Synopsys Design Compiler."

8 Q. And what about the Verilog verifier?

9 A. Verilog simulator?

10 Q. Simulator, I'm sorry.

11 A. I believe that ASI uses a ModelSim Verilog  
12 simulator and I believe Zilog uses a Synopsys VCS  
13 simulator. And there's other tools involved as well.

14 Q. So, they didn't completely use the very same  
15 tools?

16 MR. ZARIAN: Vague.

17 THE WITNESS: They used -- the simulators were  
18 provided by different vendors, yes.

19 Q. (BY MR. COOPER) Let's go to page 29, at least  
20 it begins at page 29, and then I'm moving on to page 30.  
21 And I want to focus on the sentence that appears above  
22 the heading "The Disclosure of Inventions Provision."  
23 It starts with "Specifically." Do you see that  
24 sentence?

25 A. (Reviewing document.)

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1 MR. ZARIAN: On page 29, Gary?

2 MR. COOPER: No, it's on page 30.

3 THE WITNESS: (Reviewing document.) And what  
4 was the --

5 Q. (BY MR. COOPER) The sentence starts with  
6 "Specifically," just above the bold heading.

7 A. (Reviewing document.) Yes.

8 Q. Okay. The e-mail exchange that you refer to,  
9 what did it say?

10 A. It was Roberts describing to Staab what type  
11 of USB device was in the PS10.

12 Q. With that exception, is there any other  
13 confidential information that you're aware of that  
14 Roberts, Yearsley, Tiffany, Lloyd, or anybody else  
15 associated with Sage disclosed to Zilog?

16 MR. ZARIAN: Objection, outside the scope.

17 THE WITNESS: Based on the information that I  
18 reviewed, that exchange between Roberts and Staab was a  
19 confidential exchange and that was the only one that I  
20 found, given what I reviewed.

21 Q. (BY MR. COOPER) Have you gone beyond that and  
22 performed any analysis that would address whether that  
23 disclosure caused any damages to ASI?

24 MR. ZARIAN: I'll object to that question to  
25 the extent it's vague. You can answer if you understand

Page 65

1 it.

2 THE WITNESS: I can't say from the information  
3 that was available to me whether or not any damage was  
4 done.

5 Q. (BY MR. COOPER) Let's go to page -- well,  
6 we're at page 30. Now we're going to move to "The  
7 Disclosure of Inventions Provision."

8 Help me understand what you believe was  
9 invented by Roberts, Yearsley, Tiffany, or Lloyd that  
10 should have been disclosed and assigned to ASI.

11 A. What I found in reviewing the documentation  
12 both in the CVS repository and in the data disclosure  
13 from Zilog was that the Sage team members were  
14 performing design and design improvements to the  
15 existing Encore design database. There was lots of  
16 activity. They were all working in different areas, but  
17 if you looked at what they were doing, they were  
18 publishing e-mails and subsequently executing design on  
19 suggested improvements to the design and feature  
20 implementation and things like that.

21 And when you're doing that type of work,  
22 you're inventing and creating something new, it didn't  
23 exist. And they were literally bringing it to the  
24 attention of the team, carrying out the discussion, and  
25 then bringing it back into the design.

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1 And so, the nature of that work is such that  
2 you're producing improvements to the design, which are  
3 often something that you want to protect as part of your  
4 intellectual property.

5 Q. Who wants to protect it?

6 A. Well, in this case it would be of interest to  
7 Zilog because it would presumably be of commercial value  
8 to them. These designers have contributed design  
9 improvements to the design. It's not uncommon when you  
10 start adding functionality that you find efficiencies in  
11 your current design or opportunities for improvement,  
12 and that's basically what was going on during the  
13 development that Sage was involved with.

14 So, Zilog would potentially want to protect  
15 that to make sure that competitors can't copy that same  
16 approach as an improvement, as an example.

17 Q. For example, Roberts, can you specifically  
18 identify for me an invention that he created while  
19 working for Zilog?

20 MR. ZARIAN: I'll object to that as vague.

21 THE WITNESS: I would have to go back and look  
22 at Roberts' activity. The activity that I saw was more  
23 with Tiffany and Yearsley in that area. Roberts was  
24 working in different areas and there was less  
25 references. I think he was working in some of the

1 created while working for Zilog.

2 MR. ZARIAN: Objection, vague.

3 THE WITNESS: I would have to go back and dig  
4 to cite the exact areas -- or not areas, but specifics.  
5 In general, as I recall, Tiffany was involved in  
6 improvements to DMA and in the integration of the  
7 third-party USB and how that was brought into the chip  
8 and hooked up.

9 Yearsley was involved in a lot of circuit  
10 areas. And I'd have to go back and check to see, to  
11 verify in my mind the specifics of which particular  
12 changes he was involved with and the size of those  
13 changes.

14 Q. (BY MR. COOPER) Did you specifically identify  
15 them in your report?

16 A. No, I have not -- I did not specifically call  
17 out a particular invention or anything like that in the  
18 report. I merely noted that there was a lot of work  
19 going on in the design area as far as improvements as  
20 they integrated. I would go in and look in the source  
21 code and see that they were making changes in those  
22 areas. I did not go in and extract inventions from  
23 their design. That was outside the scope of what I was  
24 being asked to do.

25 Q. Go to page 38.

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Page 69

1 outside IP sourcing and there was little record of some  
2 of that.

3 Q. (BY MR. COOPER) Okay. So, as you sit there  
4 today, you can't identify an invention attributable to  
5 Roberts; correct?

6 MR. ZARIAN: The same objection, vague.

7 THE WITNESS: I didn't -- well, I did not seek  
8 to find that sort of an example for Roberts because I  
9 had found it for Tiffany and for Yearsley.

10 Q. (BY MR. COOPER) And what about Lloyd? Did  
11 you find an invention attributable to Lloyd?

12 MR. ZARIAN: The same objection.

13 THE WITNESS: I was not able to find anything,  
14 but there's extremely little record of Lloyd's  
15 activities because that information I suspect was not  
16 provided by Zilog because he was working in a  
17 non-digital area of design. So, his work isn't in CVS.

18 I could see his involvement documented in  
19 status reports, so I knew he was doing things. And  
20 there's the possibility -- in fact, he was working in  
21 that same area, improvements, fixing things that were  
22 similar actually to things he had worked on at ASI, but  
23 I had no means to pin him down on anything.

24 Q. (BY MR. COOPER) Then let's go to Yearsley and  
25 Tiffany. Identify for me the inventions that they

1 A. (Witness complied.)

2 Q. At the top of the page the sentence that  
3 begins: "In my experience." Do you have that?

4 A. Yes.

5 Q. When you're referring to "design engineering  
6 services," are you referring to the work that was  
7 provided by Roberts, Yearsley, Tiffany, and Lloyd to  
8 Zilog?

9 A. Yes, at a minimum.

10 Q. And the "\$90 to \$95 an hour or more are  
11 typical," what are you saying there?

12 A. So, first of all, I think it's important to  
13 note the difference between salary dollars that a  
14 company pays an individual and consulting dollars.

15 Q. Okay. But what are you referring to here?

16 A. So, let me look at the context here to make  
17 sure I don't misstate this. (Reviewing document.)

18 So, the context of this is that Zilog had  
19 estimated spending \$187,000 a year on design engineering  
20 resources, not fully loaded with software or anything.  
21 So, that's \$90 an hour approximately as a salary level.

22 And I believe that that's typical. It was  
23 obviously typical for Zilog. And, in fact, that  
24 showed -- that rate showed up as a transfer cost, an  
25 internal charge, if you will, for design engineering



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1 Q. (BY MR. HUSCH) Sure. What I'm trying to  
2 figure out is whether you were asked to determine  
3 whether any of ASI's information that amounted to a  
4 trade secret or might have amounted to a trade secret  
5 was misappropriated by any of the Defendants in this  
6 case?

7 MR. ZARIAN: Objection, compound, vague, and  
8 calls for a legal conclusion as to "trade secrets."

9 THE WITNESS: So, I understood that I couldn't  
10 make a -- I'm not qualified to make a legal  
11 determination. I was asked to look at both designs and  
12 understand similarities, potential overlap of  
13 intellectual property, those sorts of questions.

14 Q. (BY MR. HUSCH) Okay. As I understood your  
15 testimony when Mr. Cooper was examining you, I thought  
16 you indicated that the only ASI confidential information  
17 that you found to have been disclosed to Zilog was  
18 information that Mr. Roberts disclosed in an e-mail to  
19 Mr. Staab regarding the application of the Innovative  
20 Semiconductor USB PHY at ASI. Did I correctly  
21 understand your testimony?

22 MR. ZARIAN: Objection, the testimony speaks  
23 for itself.

24 THE WITNESS: If I understand your question  
25 correctly, given the material that I looked at, the only

1 A. Coding guideline? I'd have to look. I'm not  
2 sure that's germane. I would have to look.

3 Q. Is that something you can do readily?

4 A. I'm not sure if I captured that, that  
5 particular tool, because it's a very narrow, less  
6 significant tool.

7 MR. ZARIAN: For the record, I'll object to  
8 this line of questioning as outside the scope of this  
9 witness's designation and expert testimony. It's  
10 certainly drifting outside of that.

11 MR. HUSCH: I think in this report he says the  
12 same tools were used.

13 MR. ZARIAN: There's one reference in the  
14 context of an opinion about a relative benefit that was  
15 inured to the benefit of Zilog, but I don't think this  
16 witness purports to have systematically or categorically  
17 cataloged all of the tools used on any two different  
18 projects. I don't think that is in any way within the  
19 scope of his opinions and testimony.

20 Is there a question pending?

21 MR. HUSCH: There is a question.

22 MR. ZARIAN: Do you have the question in mind?

23 THE WITNESS: So, in looking at the report, I  
24 do not see mention of -- could you again repeat the  
25 particular tool's function?

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1 thing that I found that I felt was a disclosure of  
2 information was what Roberts corresponded to Staab.

3 Q. (BY MR. HUSCH) About the Innovative  
4 Semiconductor USB PHY?

5 A. Yes, about the USB device, yes.

6 Q. Did Zilog's product, the Z8F6480 or 82 use an  
7 Innovative Semiconductor USB PHY?

8 A. I don't believe that it does, no.

9 Q. What tool do you understand was used for logic  
10 simulation on the Zilog Z86480/82?

11 A. The -- could you ask -- for what part of the  
12 design?

13 Q. For logic simulation.

14 A. For logic simulation it looked like VCS, the  
15 Synopsys VCS tool was the tool they used.

16 Q. And did ASI have a Synopsys VCS tool?

17 A. ASI uses the ModelSim Verilog simulator, which  
18 is very similar, the same capabilities as the VCS.

19 Q. It's not the Mentor Graphics ModelSim?

20 A. Well, I -- whose?

21 Q. That ASI uses?

22 A. Yes, ASI uses the Mentor Graphics ModelSim.  
23 Mentor Graphics is the manufacturer of the ModelSim.

24 Q. Okay. What tool was used for coding guideline  
25 check or work on the Zilog Z86480/82?

1 Q. (BY MR. HUSCH) A coding guideline checker.

2 A. So, something like a "lint" program, a Verilog  
3 "lint" program? I'm not even sure you could determine  
4 that from the data that was provided, but I did not  
5 document that. In my opinion, I don't view that as  
6 relevant. It's not an important tool, not like  
7 synthesis or something.

8 Q. Do you know what tool ASI was using for coding  
9 guideline checker work in 2011 or 2012?

10 A. No, I do not. I'm not sure that that  
11 information was provided to me.

12 Q. And what tool did Zilog use for logic  
13 synthesis or what tool was used on the Zilog Z86480/82  
14 for logic synthesis?

15 MR. ZARIAN: Objection, asked and answered.

16 THE WITNESS: I believe that was Design  
17 Compiler.

18 Q. (BY MR. HUSCH) And that was a Synopsys tool?

19 A. Yes.

20 Q. And what tool did ASI use during 2011 and '12  
21 for logic synthesis work?

22 A. I believe that was the Synopsys Design  
23 Compiler, the same tool.

24 Q. Do you know whether ASI used an Incentia  
25 DesignCraft tool for logic synthesis work rather than

NO.

A.M.

FILED 12108

NOV 13 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

~~PROPOSED~~ ORDER GRANTING  
AMERICAN SEMICONDUCTOR,  
INC.'S MOTION FOR VOLUNTARY  
DISMISSAL OF CERTAIN CLAIMS

*Jm*



On September 26, 2014, the Court took up American Semiconductor, Inc.'s Motion for Voluntary Dismissal of its Claims for Misappropriation of Trade Secrets, Improper Appropriation of Name, Consumer Protection Act, and Injunctive Relief (filed, Aug. 19, 2014) (the "Motion for Voluntary Dismissal").

All parties were represented by counsel at the hearing: John Zarian and Kennedy Luvai appeared for plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"); Gerald Husch and Stephen Thomas appeared for defendant Zilog, Inc.; and Gary Cooper and Chad Bernards appeared for defendants and counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany (collectively, the "Sage Defendants").

Based upon the papers filed in support of or in objection to the Motion for Voluntary Dismissal, oral argument of counsel at the hearing, the findings made by the Court on the record at the hearing, and for good cause appearing therefor,

IT IS HEREBY ORDERED that the following claims, as asserted in the operative Second Amended Complaint, are each dismissed *without prejudice* with the Court reserving the issue of fees and costs as to each until all pending claims in this action are fully resolved:

- (a) Idaho Trade Secrets Act Violation against all defendants (Sixth Cause of Action);
- (b) Improper Appropriation of American Semiconductor's Name against the Sage Defendants (Seventh Cause of Action);
- (c) Consumer Protection Act Violation against the Sage Defendants (Ninth Cause of Action); and
- (d) Injunctive Relief against all defendants (Eleventh Cause of Action).

This Order incorporates by reference, as if fully set forth herein, the Court's reasoning, findings of fact and/or conclusions of law orally stated in open court and upon the record during hearing. JM

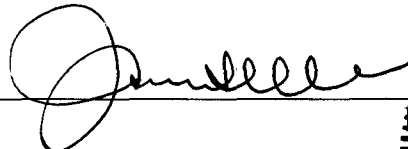
DATED this 13<sup>th</sup> day of November, 2014. JM

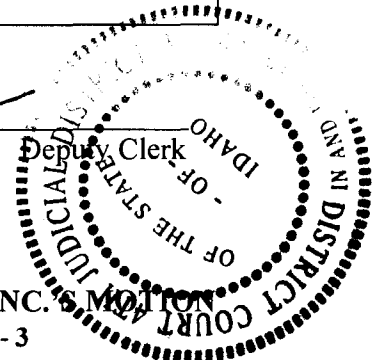
Thomas F. Neville  
The Honorable Thomas F. Neville  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13<sup>th</sup> day of November, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile Email: dbower@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile Email: srt@moffatt.com gth@moffatt.com
John N. Zarian Kennedy K. Luvai PARSONS BEHLE & LATIMER 800 W. Main St., Suite 1300 Boise, ID 83702 Facsimile (208) 562-4901 <i>Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile Email: jzarian@parsonsbehle.com kluvai@parsonsbehle.com sarnett@parsonsbehle.com





**ORDER GRANTING AMERICAN SEMICONDUCTOR, INC.'S MOTION  
FOR VOLUNTARY DISMISSAL OF CERTAIN CLAIMS - 3**

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 12:10

NOV 13 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

~~PROPOSED~~ ORDER DENYING, IN  
PART, AND GRANTING, IN PART,  
ZILOG, INC.'S MOTION FOR  
SUMMARY JUDGMENT

*Jm*

On September 26, 2014, the Court heard oral argument concerning Defendant Zilog, Inc.'s Motion for Summary Judgment (filed, Aug. 29, 2014) (the "Motion for Summary Judgment").

All parties were represented by counsel at the hearing: John Zarian and Kennedy Luvai appeared for plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"); Gerald Husch and Stephen Thomas appeared for defendant Zilog, Inc. ("Zilog"); and Gary Cooper and Chad Bernards appeared for defendants and counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany.

Based upon memoranda, declarations and other papers filed in support of or in opposition to the Motion for Summary Judgment, oral argument of counsel at the hearing, the findings made by the Court on the record at the hearing, and for good cause appearing therefor,

IT IS HEREBY ORDERED that the Motion for Summary Judgment is GRANTED, in part, and DENIED, in part, as further set forth below.

IT IS FURTHER ORDERED that the Motion for Summary Judgment as it relates to ASI's claims for Idaho Trade Secrets Act Violation (Sixth Cause of Action) and for Injunctive Relief (Eleventh Cause of Action) is rendered MOOT in light of the Court's grant of ASI's motion for voluntary dismissal as to those claims.

IT IS FURTHER ORDERED that the Motion for Summary Judgment as it relates to ASI's claims against Zilog for Tortious Interference with Prospective Economic Advantage and Tortious Interference with Contract (Fifth Cause of Action) is DENIED.

IT IS FURTHER ORDERED that the Motion for Summary Judgment as it relates to ASI's claim against Zilog for Unjust Enrichment (Eighth Cause of Action) is GRANTED.

IT IS FURTHER ORDERED that the Motion for Summary Judgment as it relates to ASI's claim against Zilog for Declaratory Relief (Tenth Cause of Action) is GRANTED.

 ~~PROPOSED~~ ORDER DENYING, IN PART, AND GRANTING, IN PART, ZILOG, INC'S  
MOTION FOR SUMMARY JUDGMENT - 1

This Order incorporates by reference, as if fully set forth herein, the Court's reasoning, findings of fact and/or conclusions of law orally stated in open court and upon the record during hearing.

DATED this 13<sup>th</sup> day of November, 2014.

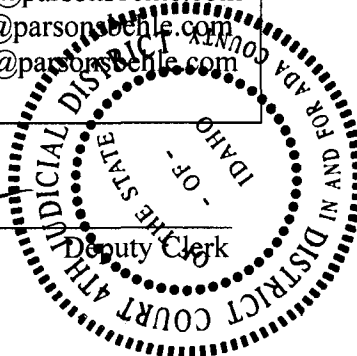
J. Neville  
The Honorable Thomas F. Neville  
District Judge

*JM* **[REPOSED] ORDER DENYING, IN PART, AND GRANTING, IN PART, ZILOG, INC'S  
MOTION FOR SUMMARY JUDGMENT - 2**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13 day of March, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile Email: dbower@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile Email: srt@moffatt.com gth@moffatt.com
John N. Zarian Kennedy K. Luvai PARSONS BEHLE & LATIMER 800 W. Main St., Suite 1300 Boise, ID 83702 Facsimile (208) 562-4901 <i>Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile Email: jzarian@parsonsbehle.com kluvai@parsonsbehle.com sarnett@parsonsbehle.com



~~PROPOSED~~ ORDER DENYING, IN PART, AND GRANTING, IN PART, ZILOG, INC'S  
MOTION FOR SUMMARY JUDGMENT - 3

RECEIVED  
NOV - 3 2014  
Ada County Clerk

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 1110

NOV 13 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

RELATED COUNTER ACTIONS

CASE NO. CV-OC-1123344

**ORDER DENYING ASI'S MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT AGAINST SAGE  
DEFENDANTS**

On September 26, 2014, the Court heard oral argument on multiple motions, including the Motion for Partial Summary Judgment filed by American Semiconductor, Inc. against Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany, collectively referred to as the Sage Defendants. The Motion for Partial Summary Judgment filed by American Semiconductor, Inc. against the Sage Defendants sought summary judgment on breach of contract (First Cause of Action); breach of fiduciary duty, specifically loyalty (Second Cause of Action); breach of the



covenant of good faith and fair dealing (Third Cause of Action); and tortious interference with prospective economic expectancy with Zilog (Fourth Cause of Action)

All parties were represented by counsel at the hearing: John Zarian and Kennedy Luvai appeared for plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"); Gerald Husch and Stephen Thomas appeared for defendant Zilog, Inc. ("Zilog"); and Gary Cooper and Chad Bernards appeared for defendants and counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany ("Sage Defendants").

After consideration of the pleadings, moving and opposition papers, depositions, affidavits and other papers filed in support of or in opposition to the Motion for Partial Summary Judgment, oral argument of counsel at the hearing, the Court issued its findings and conclusions on the record at the hearing. Now therefore, after being fully advised about the matter:

IT IS HEREBY ORDERED that the Motion for Partial Summary Judgment filed by ASI is DENIED as further set forth below.

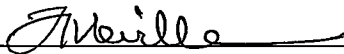
IT IS FURTHER ORDERED that the Motion for Partial Summary Judgment as it relates to ASI's claims against Roberts, Yearsley and Tiffany for breach of contract (First Cause of Action); breach of fiduciary duty, specifically loyalty (Second Cause of Action); breach of the covenant of good faith and fair dealing (Third Cause of Action); and tortious interference with ASI's prospective advantage to do work for Zilog (Fourth Cause of Action) is DENIED.

IT IS FURTHER ORDERED that the Motion for Partial Summary Judgment as it relates to ASI's claims against Sage Silicon Solutions, LLC for tortious interference with ASI's prospective advantage to do work for Zilog (Fourth Cause of Action) is DENIED.

The basis and particular reasons for this Order were orally stated in open court and are

contained in the record created during hearing; *such findings of fact and conclusions of law by the Court on September 26, 2014 are hereby incorporated by reference as if*  
DATED this 3<sup>rd</sup> day of ~~October~~ <sup>November</sup>, 2014. *set forth fully herein.* *gm*

*So Ordered.*

  
\_\_\_\_\_  
Honorable Thomas F. Neville  
District Judge

**CLERK'S CERTIFICATE OF SERVICE**

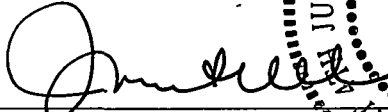
I hereby certify that on the 13 day of <sup>Nov</sup>~~October~~, 2014, I served a true and correct copy of the foregoing to:

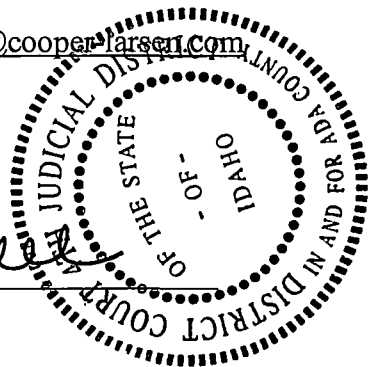
John N. Zarian	<input type="checkbox"/>	U.S. mail
Kennedy K. Luvai	<input type="checkbox"/>	Express mail
Parsons Behle & Latimer	<input checked="" type="checkbox"/>	Hand delivery
800 W Main Street, Suite 1300	<input type="checkbox"/>	Electronic delivery: <a href="mailto:jzarian@parsonsbehle.com">jzarian@parsonsbehle.com</a>
Boise, ID 83702		<a href="mailto:kluvai@parsonsBehle.com">kluvai@parsonsBehle.com</a>
	<input type="checkbox"/>	Fax: 208-562-4901

Daniel W. Bower	<input type="checkbox"/>	U.S. mail
Chad Bernards	<input type="checkbox"/>	Express mail
Stewart Taylor & Morris, PLLC	<input checked="" type="checkbox"/>	Hand delivery
12550 W Explorer Drive, Suite 100	<input type="checkbox"/>	Electronic delivery <a href="mailto:dbower@stm-law.com">dbower@stm-law.com</a>
Boise, ID 83713	<input type="checkbox"/>	Fax: 208-345-4461

Gerald T. Husch	<input type="checkbox"/>	U.S. mail
Moffatt Thomas Barrett Rock & Fields	<input type="checkbox"/>	Express mail
101 S. Capitol Blvd., 10 <sup>th</sup> Floor	<input checked="" type="checkbox"/>	Hand delivery
P.O. Box 829	<input type="checkbox"/>	Electronic delivery <a href="mailto:gth@moffatt.com">gth@moffatt.com</a>
Boise, ID 83701	<input type="checkbox"/>	Fax: 208-385-5384

Gary L. Cooper	<input type="checkbox"/>	U.S. mail
Cooper & Larsen	<input type="checkbox"/>	Express mail
P.O. Box 4429	<input checked="" type="checkbox"/>	Hand delivery
Pocatello, ID 83205-4229	<input type="checkbox"/>	Electronic delivery <a href="mailto:gary@cooper-larsen.com">gary@cooper-larsen.com</a>
	<input type="checkbox"/>	Fax: 208-235-1182

  
\_\_\_\_\_  
Deputy Clerk



*Alvillo House  
FILE 11/13/14*

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NOV 12 2014  
Ada County Clerk

NO. \_\_\_\_\_ FILED 2:52 P.M.  
A.M. \_\_\_\_\_

NOV 13 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
 )  
Plaintiff, )

CASE NO. CV-OC-1123344

vs. )

**ORDER GRANTING IN PART AND  
DENYING IN PART SAGE  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT AGAINST  
AMERICAN SEMICONDUCTOR, INC.**

SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, WILLIAM TIFFANY )  
and Defendants DOES I - X, )  
 )  
 )  
Defendants. )

\_\_\_\_\_  
RELATED COUNTER ACTIONS )  
\_\_\_\_\_ )

On September 26, 2014, the Court heard oral argument on multiple motions, including the Motion for Summary Judgment filed by Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany, collectively referred to as the Sage Defendants. The Motion for Summary Judgment filed by the Sage Defendants sought summary judgment and dismissal of each and every Cause of Action alleged by American Semiconductor, Inc. against some or all of the Sage Defendants.

*2*

All parties were represented by counsel at the hearing: John Zarian and Kennedy Luvai appeared for plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"); Gerald Husch and Stephen Thomas appeared for defendant Zilog, Inc. ("Zilog"); and Gary Cooper and Chad Bernards appeared for defendants and counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany ("Sage Defendants").

After consideration of the pleadings, moving and opposition papers, depositions, affidavits and other papers filed in support of or in opposition to the Motion for Summary Judgment, oral argument of counsel at the hearing, the Court issued its findings and conclusions on the record at the hearing. Now therefore, after being fully advised about the matter:

IT IS HEREBY ORDERED that the Motion for Summary Judgment filed by the Sage Defendants is GRANTED, in part, and DENIED, in part, as further set forth below.

IT IS FURTHER ORDERED that the Motion for Summary Judgment as it relates to ASI's claims against Roberts, Yearsley and Tiffany for breach of contract (First Cause of Action); breach of fiduciary duty, specifically loyalty (Second Cause of Action); breach of the covenant of good faith and fair dealing (Third Cause of Action); tortious interference with ASI's prospective advantage to do work for Zilog (Fourth Cause of Action); for unjust enrichment related to the individual defendants' retention of salary payment and benefits while operating a business in direct competition with ASI (Eighth Cause of Action) is DENIED.

IT IS FURTHER ORDERED that the Motion for Summary Judgment as it relates to ASI's claims against Sage Silicon Solutions, LLC for tortious interference with ASI's prospective advantage to do work for Zilog (Fourth Cause of Action) is DENIED.


jm IT IS FURTHER ORDERED that the Motion for Summary Judgment as it relates to ASI's claims against Roberts, Yearsley and Tiffany for tortious interference with contract (Fourth Cause of Action), for unjust enrichment related to the receipt of a benefit from utilizing ASI's trade secrets (Eight~~h~~ Cause of Action); and for declaratory relief (Tenth Cause of Action) is GRANTED.

jm IT IS FURTHER ORDERED that the Motion for Summary Judgment as it relates to ASI's claim against Sage Silicon Solutions, LLC for breach of the covenant of good faith and fair dealing (Third Cause of Action); for tortious interference with contract (Fourth Cause of Action); for unjust enrichment (Eight~~h~~ Cause of Action); and for declaratory relief (Tenth Cause of Action) is GRANTED.

IT IS FURTHER ORDERED that the Motion for Summary Judgment directed at ASI's claims for Idaho Trade Secrets Act Violation (Sixth Cause of Action), improper appropriation of ASI's name (Seventh Cause of Action), Consumer Protection Act violation (Ninth Cause of Action) and for Injunctive Relief (Eleventh Cause of Action) incorporates ASI's motion for voluntary dismissal filed on August 19, 2014, and said claims are dismissed pursuant to ASI's motion for voluntary dismissal of those claims.

The basis and particular reasons for this Order were orally stated in open court and are contained in the record created during hearing.

DATED this 13<sup>th</sup> day of November, 2014.

  
The Honorable Thomas F. Neville  
District Judge

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on the 13 day of November, 2014, I served a true and correct copy of the foregoing to:

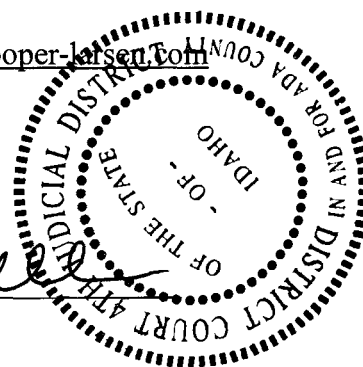
John N. Zarian	<input type="checkbox"/>	U.S. mail
Kennedy K. Luvai	<input type="checkbox"/>	Express mail
Parsons Behle & Latimer	<input checked="" type="checkbox"/>	Hand delivery
800 W Main Street, Suite 1300	<input type="checkbox"/>	Electronic delivery: <a href="mailto:jzarian@parsonsbehle.com">jzarian@parsonsbehle.com</a>
Boise, ID 83702		<a href="mailto:kluvai@parsonsBehle.com">kluvai@parsonsBehle.com</a>
	<input type="checkbox"/>	Fax: 208-562-4901

Daniel W. Bower	<input type="checkbox"/>	U.S. mail
Chad Bernards	<input type="checkbox"/>	Express mail
Stewart Taylor & Morris, PLLC	<input checked="" type="checkbox"/>	Hand delivery
12550 W Explorer Drive, Suite 100	<input type="checkbox"/>	Electronic delivery <a href="mailto:dbower@stm-law.com">dbower@stm-law.com</a>
Boise, ID 83713	<input type="checkbox"/>	Fax: 208-345-4461

Gerald T. Husch	<input type="checkbox"/>	U.S. mail
Moffatt Thomas Barrett Rock & Fields	<input type="checkbox"/>	Express mail
101 S. Capitol Blvd., 10 <sup>th</sup> Floor	<input checked="" type="checkbox"/>	Hand delivery
P.O. Box 829	<input type="checkbox"/>	Electronic delivery <a href="mailto:gth@moffatt.com">gth@moffatt.com</a>
Boise, ID 83701	<input type="checkbox"/>	Fax: 208-385-5384

Gary L. Cooper	<input type="checkbox"/>	U.S. mail
Cooper & Larsen	<input type="checkbox"/>	Express mail
P.O. Box 4429	<input checked="" type="checkbox"/>	Hand delivery
Pocatello, ID 83205-4229	<input type="checkbox"/>	Electronic delivery <a href="mailto:gary@cooper-larsen.com">gary@cooper-larsen.com</a>
	<input type="checkbox"/>	Fax: 208-235-1182

Deputy Clerk



NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 3:30

NOV 13 2014

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
corporation; ZILOG, INC., a Delaware  
corporation; DAVID ROBERTS, GYLE  
YEARSLEY, WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV-OC 1123344

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
RE: DEFENDANTS ROBERTS,  
YEARSLEY AND TIFFANY'S  
COUNTERCLAIMS

This matter having come before the above-captioned Court on Plaintiff American Semiconductor, Inc.'s Motion for Summary Judgment Re: Defendants Roberts, Yearsley and Tiffany's Counterclaims filed August 29, 2014 (herein "Motion"), which came on for hearing on September 26, 2014 before the Court, the Honorable Thomas F. Neville presiding. American Semiconductor, Inc. was represented by John N. Zarian and Kennedy K. Luvai of Parsons Behle & Latimer. Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany were represented by Gary L. Cooper of Cooper & Larsen and Chad E. Bernards of Stewart

**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE:  
DEFENDANTS ROBERTS, YEARSLEY AND TIFFANY'S COUNTERCLAIMS - 1**

001361



Taylor & Morris. Zilog, Inc. was represented by Gerald T. Husch and Stephen R. Thomas of Moffatt Thomas Barrett Rock & Fields.

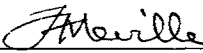
Prior to oral argument, the Court made a recitation of the supporting papers in support and those in opposition to the Motion. Mr. Zarian made oral argument for the Motion and Mr. Bernards made arguments against the Motion.

Based upon the memoranda, affidavits and other papers filed in support of and/or in opposition to the Motion, oral agreement of respective counsel at the hearing, the findings made by the Court on the record in open court at the hearing, and for good cause appearing therefor,

**IT IS HEREBY ORDERED that the Motion is DENIED in its entirety.**

This Order incorporates by reference, as if fully set forth herein, the Court's findings of fact~~X~~ and conclusions of law set forth in open court and upon the record during the September 26, 2014 hearing.

DATED this 13<sup>th</sup> day of November, 2014.

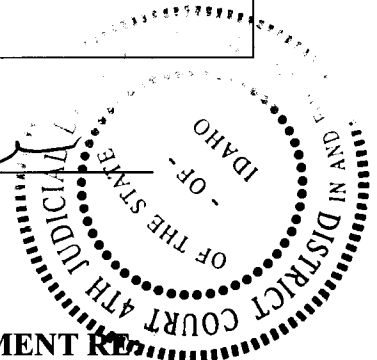
  
\_\_\_\_\_  
Honorable Thomas F. Neville  
District Court Judge

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of November, 2014, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

John N. Zarian Kennedy K. Luvai PARSONS BEHLE & LATIMER 800 W. Main Street, Suite 1300 Boise, ID 83702 Telephone: 562-4900 <i>Attorneys for Plaintiff</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile 208-562-4901 <input type="checkbox"/> Electronic Mail
Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2 <sup>nd</sup> Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: 208-235-1145 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile 208-235-1182 <input type="checkbox"/> Electronic Mail
Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O. Box 829 Boise, ID 83701-0829 Telephone: 208-345-2000 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile 208-385-5384 <input type="checkbox"/> Electronic Mail
Daniel W. Bower Chad E. Bernards STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, Idaho 83713 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Facsimile 208-345-4461 <input type="checkbox"/> Electronic Mail

By   
Deputy Clerk



**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT RE  
DEFENDANTS ROBERTS, YEARSLEY AND TIFFANY'S COUNTERCLAIMS - 3**

001363

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 340

NOV 25 2014

CHRISTOPHER D. RICH, Clerk  
By TENILLE RAD  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
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PARSONS BEHLE & LATIMER  
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SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**SECOND SUPPLEMENTAL  
DECLARATION OF KENNEDY K.  
LUVAI IN SUPPORT OF  
PLAINTIFF'S MOTIONS *IN LIMINE***

I, Kennedy K. Luvai, declare as follows:

1. I am duly licensed to practice law in Idaho and before this Court, and I am over eighteen years of age. I am an attorney with the law firm of Parsons Behle & Latimer, PLC, and one of the attorneys of record for plaintiff and counterdefendant American Semiconductor, Inc. ("ASI") in the above-referenced action. I make this declaration based upon my own personal knowledge and, if called upon, could and would testify as to the truth of the statements contained herein.

2. I make this declaration in support of ASI's Motion *in Limine* No. 12 Re: Zilog's Improperly Withheld Meeting Minutes filed concurrently herewith.

3. Attached hereto as **Exhibit A** is a true and correct copy of Defendant Zilog, Inc.'s Responses to Plaintiff's Seventh Set of Requests for Production as served on counsel for ASI by U.S. Mail.

I declare under penalty of perjury under the laws of Idaho that the foregoing is true and correct. Executed this 25th day of November, 2014, at Boise, Idaho.



---

Kennedy K. Luvai

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25th day of November, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
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Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
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*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

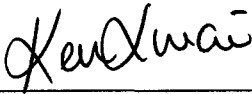
☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
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barbie@cooper-larsen.com

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Chad E. Bernards  
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Facsimile: (208) 345-4461  
*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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suzie@stm-law.com

Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O.. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
*Attorneys for Defendant Zilog, Inc.*

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☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
Email: srt@moffatt.com  
gth@moffatt.com

  
\_\_\_\_\_  
Kennedy K. Luvai

## **EXHIBIT A**

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
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Facsimile (208) 385-5384  
srt@moffatt.com  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DEFENDANT ZILOG, INC.'S  
RESPONSES TO PLAINTIFF'S  
SEVENTH SET OF REQUESTS FOR  
PRODUCTION**

**DEFENDANT ZILOG, INC.'S RESPONSES TO PLAINTIFF'S  
SEVENTH SET OF REQUESTS FOR PRODUCTION - 1**

Client: 3617024.1

001368

COMES NOW Defendant Zilog, Inc. ("Zilog"), by and through undersigned counsel of record, and hereby responds to Plaintiff's Seventh Set of Requests for Production as follows:

### **PRELIMINARY STATEMENT**

The responses provided herein are based upon reasonable and good faith efforts conducted in the time available since the Document Request was served. As of the time of this response, ASI has not produced all requested discoverable records nor has Zilog had an opportunity to take all of the depositions of plaintiff, its witnesses, or third parties who may have knowledge of critical facts or who may possess additional documents.

As a consequence, Zilog's responses are based upon reasonable, good faith and diligent efforts and information now known to Zilog and which Zilog believes to be relevant to the issues raised in this action. Discovery is proceeding, however, and Zilog may subsequently acquire additional information bearing upon the document requests.

Without in any way obligating itself to do so, Zilog reserves the right (a) to make subsequent revisions, supplementation or amendment to this response based upon any information, evidence, documents, facts and things which hereafter may be discovered, or the relevance of which may hereafter be discovered and (b) to produce, introduce or rely upon additional or subsequently acquired or discovered writings, interviews, and information at trial or in any pretrial proceedings held herein.

Zilog submits these responses solely for the purpose of, and in relation to, this action. Each response herein is made subject to all appropriate objections (including, but not limited to, objections concerning competency, relevance, materiality, propriety and admissibility) that would require the exclusion of any information, document or thing at the time



of trial. All such objections, and the grounds for such objections, are reserved and may be interposed at the time of trial or any other proceeding in this action.

Zilog incorporates this Preliminary Statement into each response herein, as if fully set forth therein.

### **COMMON OBJECTIONS**

A. Zilog objects to the Document Requests (inclusive of any preceding definitions) to the extent that they purport to impose obligations upon Zilog that are contrary to or inconsistent with applicable provisions of the Idaho Rules of Civil Procedure.

B. Zilog objects to the Document Requests to the extent that they seek premature pretrial or expert disclosures contrary to applicable rules, order(s) of the Court, and/or stipulation(s) of the parties to this action.

C. Zilog objects to the Document Requests to the extent that they could be construed as requesting (a) disclosure of information prepared by or at the direction of its attorneys, (b) disclosure of information prepared by or for Zilog or its representatives in contemplation of litigation or trial, (c) disclosure, release, or review of confidential communications by and between Zilog and its attorneys, or (d) information otherwise covered by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, rule or immunity.

D. Zilog objects to the Document Requests to the extent that they seek confidential financial and/or sales data, the disclosure of which could negatively impact Zilog's competitive or business position or result in a breach by Zilog of an obligation to a third-party to maintain such information as confidential. To the extent that such information is properly discoverable, Zilog shall produce the same only under the terms of the Protective Order in place

in this case and under the implied and express understanding that Zilog shall treat that information appropriately pursuant to the Protective Order.

E. Zilog objects to the Document Requests to the extent that they seek information not reasonably expected to yield information relevant to the allegations in the Second Amended Complaint or any Counterclaim, to the proposed relief or to the defenses of either side.

F. Zilog objects to the Document Requests to the extent that they are overbroad, unduly burdensome, or require unreasonable efforts or expense on behalf of Zilog in order to comply.

G. Zilog objects to the Document Requests to the extent that they seek records not in Zilog's possession, custody or control.

H. Zilog objects to the Document Requests to the extent that they seek to impose an obligation on Zilog to provide information for or on behalf of any person or entity other than Zilog.

I. Zilog objects to the Document Requests as vague and ambiguous to the extent that they do not adequately define important, primary, key or controlling terms as used therein.

J. Zilog objects to the Document Requests to the extent that they seek information obtainable in a more convenient, less burdensome, and less expensive method than through requests for production of documents.

K. Zilog objects to the Document Requests to the extent that the burden of obtaining responsive documents is substantially the same, under the circumstances, for the requesting parties as it is for Zilog.

## **DOCUMENT REQUESTS**

**REQUEST FOR PRODUCTION NO. 42:** All DOCUMENTS that evidence, reflect, or constitute minutes from development team meetings in connection with the 6480/6482 project from October 11, 2011 through tapeout.

**RESPONSE NO. 42:** Zilog incorporates any and all of the foregoing General Objections to the extent they are applicable to this discovery request. Zilog objects to this discovery request on the grounds that it seeks discovery of information that is not relevant to the subject matter involved in the pending action, is not reasonably calculated to lead to the discovery of admissible evidence and is therefore outside the scope of discovery as set forth in Idaho Rule of Civil Procedure 26(b)(1).

**REQUEST FOR PRODUCTION NO. 43:** All DOCUMENTS that evidence, reflect, or constitute pay-stubs, statements of earnings, W-2 forms, 1099 forms, K-1 forms, and any other documents given to David Roberts, Gyle Yearsley and William Tiffany by ZILOG showing income received by each of them as full-time employees of ZILOG for the three years preceding their lay-offs from the company in 2011.

**RESPONSE NO. 43:** Zilog incorporates any and all of the foregoing General Objections to the extent they are applicable to this discovery request. Zilog objects to this discovery request on the grounds that it seeks discovery of information that is not reasonably calculated to lead to the discovery of admissible evidence and is therefore outside the scope of discovery as set forth in Idaho Rule of Civil Procedure 26(b)(1). Zilog objects to this discovery request on the grounds that it is overbroad, unduly burdensome, and requires unreasonable effort and expense on behalf of Zilog in order to comply. Zilog objects to this discovery request because it seeks records given to David Roberts, Gyle Yearsley and William Tiffany and such

records are by definition not in Zilog's possession, custody or control. Zilog objects to this discovery request because it seeks to impose an obligation on Zilog to provide information for or on behalf of persons other than Zilog. Zilog objects to this discovery request because it seeks information obtainable in a more convenient, less burdensome, and less expensive method than through a request for production of documents to Zilog. Finally, Zilog objects to this discovery request because the burden of obtaining responsive documents is substantially the same, under the circumstances, for plaintiff as it is for Zilog.

Without waiving these objections, Zilog refers plaintiff to the documents produced herewith as Z036622 – Z036678.

**REQUEST FOR PRODUCTION NO. 44:** All DOCUMENTS that evidence, reflect or constitute requests for contracts, proposals, scopes of work, services requested, proposals, invoices, quotations, payment records, time sheets, time cards and any other documents related to design services provided by or through CLARE in connection with the 6480/6482 project.

**RESPONSE NO. 44:** Zilog incorporates any and all of the foregoing General Objections to the extent they are applicable to this discovery request. Zilog objects to this discovery request on the grounds that it seeks discovery of information that is not relevant to the subject matter involved in the pending action, is not reasonably calculated to lead to the discovery of admissible evidence and is therefore outside the scope of discovery as set forth in Idaho Rule of Civil Procedure 26(b)(1). Zilog further objects to this discovery request on the grounds that it seeks discovery of the confidential and proprietary information of one or more entities that are not parties to this action. Finally, although Zilog denies that plaintiff ever had a

right to the discovery sought by this discovery request, Zilog objects to this discovery request on the grounds that plaintiff has waived any right that could ever have existed.

**REQUEST FOR PRODUCTION NO. 45:** All DOCUMENTS that evidence, reflect or constitute any proposal, contract or invoice for design services provided by Monte Dalrymple or Systemide International Corporation during the RELEVANT TIME PERIOD.

**RESPONSE NO. 45:** Zilog has no such documents.

**REQUEST FOR PRODUCTION NO. 46:** All DOCUMENTS that evidence, reflect or constitute any assignment of inventions agreement or confidentiality agreement between ZILOG and Monte Dalrymple related to Mr. Dalrymple's employment at ZILOG.

**RESPONSE NO. 46:** Zilog has no such documents.

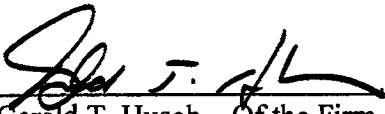
**REQUEST FOR PRODUCTION NO. 47:** All DOCUMENTS that evidence, reflect or constitute any Agreement between ZILOG and any third party relating to payment for tools used in the 6480/6482 project.

**RESPONSE NO. 47:** Zilog incorporates any and all of the foregoing General Objections to the extent they are applicable to this discovery request. Zilog objects to this discovery request on the grounds that it seeks discovery of information that is not relevant to the subject matter involved in the pending action, is not reasonably calculated to lead to the discovery of admissible evidence and is therefore outside the scope of discovery as set forth in Idaho Rule of Civil Procedure 26(b)(1), as the Court has already ruled. Zilog further objects to this discovery request on the grounds that it seeks discovery of the confidential and proprietary information of one or more entities that are not parties to this action. Zilog also objects to this discovery request because the term "tools" is vague and undefined. Finally, although Zilog denies that plaintiff ever had a right to the discovery sought by this discovery request, Zilog

objects to this discovery request on the grounds that plaintiff has waived any right that could ever have existed.

DATED this 3rd day of November, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November, 2014, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG, INC.'S RESPONSES TO PLAINTIFF'S SEVENTH SET OF REQUESTS FOR PRODUCTION** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

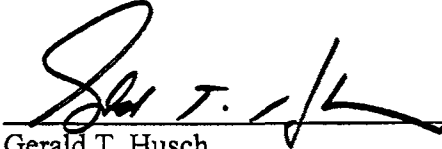
☒ (x) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
12550 W. Explorer Dr., Suite 100  
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Facsimile (208) 345-4461  
*Attorney for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☒ (x) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

John N. Zarian  
Kennedy K. Luvai  
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800 W. Main St., Suite 1300  
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Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☒ (x) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

  
Gerald T. Husch

NOV 26 2014

CHRISTOPHER D. RICH, Clerk  
By PATRICK McLAUGHLIN  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
Sarah H. Arnett, ISB No. 6545  
PARSONS BEHLE & LATIMER  
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Facsimile: (208) 562-4901  
Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com  
SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**PLAINTIFF'S MOTION *IN LIMINE*  
NO. 13 TO PRECLUDE JOINTLY  
RETAINED DEFENSE EXPERT  
DENNIS REINSTEIN'S UNTIMELY  
DISCLOSED EXPERT OPINIONS**




Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully moves for an order *in limine* precluding defendants from offering expert testimony at trial any and all expert opinions from their jointly retained damages expert, Dennis Reinstein, that were not disclosed as part of either Mr. Reinstein's September 3, 2014 expert report or Mr. Reinstein's November 5, 2014 deposition.

This request is made pursuant to Rules 26 and 37 of the Idaho Rules of Civil Procedure and is warranted on the grounds that defendants purported to offer, for the first time, new and undisclosed damages opinions and theories only yesterday, November 25, 2014. This disclosure, made only a few weeks before trial, is untimely given that the deadline for defendants to disclose all of the opinions Mr. Reinstein intends to express at trial came and went some three months ago.

In support of the foregoing motion, ASI relies upon this motion, the accompanying memorandum, the accompanying *Third Supplemental* Declaration of Kennedy K. Luvai in Support of Plaintiff's Motions *in Limine*, the pleadings and records on file in this matter, on all matters that the Court may take judicial notice, such matters as may be presented by counsel at or prior to any hearing, and upon such other evidence or argument as may be considered by the Court prior to ruling on this motion.

DATED this 26th day of November, 2014.

PARSONS BEHLE & LATIMER

By   
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

**PLAINTIFF'S MOTION *IN LIMINE* NO. 13  
TO PRECLUDE JOINTLY RETAINED DEFENSE EXPERT DENNIS REINSTEIN'S  
UNTIMELY DISCLOSED EXPERT OPINIONS - 1**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of November, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
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*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: gary@cooper-larsen.com barbie@cooper-larsen.com

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Boise, ID 83713  
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*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: dbower@stm-law.com suzie@stm-law.com

Stephen R. Thomas  
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MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
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Facsimile: (208) 385-5384  
*Attorneys for Defendant Zilog, Inc.*

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<input checked="" type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: srt@moffatt.com gth@moffatt.com



\_\_\_\_\_  
Kennedy K. Luvai

Stephen R. Thomas, ISB No. 2326  
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srt@moffatt.com  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 440

DEC 03 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDA  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
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ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S OPPOSITION TO  
PLAINTIFF'S MOTION IN LIMINE  
NO. 13 TO PRECLUDE JOINTLY  
RETAINED DEFENSE EXPERT  
DENNIS REINSTEIN'S [ALLEGEDLY]  
UNTIMELY DISCLOSED EXPERT  
OPINIONS**

## I. INTRODUCTION

Plaintiff has moved in limine to exclude all opinions of joint defense damages expert Dennis Reinstein that were allegedly not disclosed either in Mr. Reinstein's Expert Witness Report dated September 3, 2014, or in his deposition taken on November 5, 2014. ASI's principal argument is that defendants, by serving Mr. Reinstein's supplemental report on November 25, 2014, "seek an untimely do-over by offering *brand new* expert opinions not previously disclosed." Memorandum in Support of Plaintiff's Motion *in Limine* No. 13 to Preclude Jointly Retained Defense Expert Dennis Reinstein's Untimely Disclosed Expert Opinions ("ASI's Memo") at 1-2 (emphasis in original). The simple fact is that ASI itself is entirely responsible for the delay about which it complains because ASI withheld and refused to disclose pertinent and important information upon which the opinions of its own damages expert, Richard S. Hoffman, are based, even though that information was readily available to ASI, that information was requested by defense counsel on numerous occasions, and that information should have been disclosed as part of Mr. Hoffman's report on August 4, 2014, pursuant to the Court's May 14, 2014, Order Granting Stipulation Re: Case Management Deadlines ("Scheduling Order").

The Court's Scheduling Order incorporated the parties' stipulation that "120 days before trial [*i.e.*, by August 4, 2014], plaintiff shall disclose all information required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure regarding expert witnesses." Stipulation Re: Case Management Deadlines at 2. Of course, Rule 24(b) required ASI to timely disclose "a complete statement of all opinions to be expressed [by Mr. Hoffman] and the basis and reasons therefore." I.R.C.P. 26(b)(4)(a)(1)(i). ASI is now attempting to benefit from its own refusal to

produce information upon which ASI's own expert's opinions are based, knowing full well that the withheld information prevented Mr. Reinstein from fully analyzing Mr. Hoffman's report.

As Mr. Reinstein stated in his Expert Witness Report of September 3, 2014, the information provided by ASI was not sufficient to enable him to replicate the calculations and allocation of costs that formed the basis of amounts Mr. Hoffman used to build-up ASI's alleged lost revenues. Furthermore, in his deposition of November 5, 2014, Mr. Reinstein testified that the missing information was what "would drive the rest of [his] analysis." When ASI finally provided the missing information<sup>1</sup> during Mr. Hoffman's deposition on October 30, 2014, and in Mr. Reinstein's deposition on November 5, 2014, Mr. Reinstein was able to complete his analysis and he promptly provided ASI with his supplemental report of November 24, 2014. Trial is over a month away, and any prejudice ASI perceives it might suffer could be cured by the simple expedient of deposing Mr. Reinstein regarding his supplemental report.

## **II. BACKGROUND**

On or about August 4, 2014, ASI served Mr. Hoffman's Expert Witness Report dated August 4, 2014. In that Expert Witness Report, Mr. Hoffman ultimately opined that ASI had lost profits of \$1,025,089 based on lost revenues of \$1,182,488 (an incredible profit margin of 86.7%) because Zilog had hired Sage rather than ASI to work on Zilog's project. As part of

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<sup>1</sup> The "missing information" provided by ASI was not the requested copy of Schedule 8 to Hoffman's Expert Witness Report in its native electronic (Excel) format, which, when accessed, would illustrate the unproduced data. Reinstein Dec, p. 5, ¶ 16. Instead, what ASI ultimately provided was a hard copy printout of the formulas for each data cell contained in Schedule 8, which then required Reinstein to enter the formulas into his own re-created excel file and test the formulas to make sure the result was consistent with Hoffman's Schedule 8. Reinstein Dec, p. 5, ¶ 15. It would have taken ASI longer to print the formulas than it would have to just provide the Excel file into which the formulas were already embedded. Reinstein Dec, p. 5, ¶ 15. *See also* Husch Dec, Ex H (Reinstein Depo), 39:15-25 (it would certainly be easier to have the native Excel file version of Schedule 8 than to use a legend to recreate all the formulas).

his Expert Witness Report, Mr. Hoffman included eight (8) schedules. However, Mr. Hoffman's Expert Witness Report did not include a legible hard copy of Schedule 8. Declaration of Gerald T. Husch in Opposition to Plaintiff's Motion in Limine No. 13 to Preclude Jointly Retained Expert Dennis Reinstein's Untimely Disclosed Expert Opinions ("Husch Dec"), p. 2, ¶ 2 and Ex A (Schedule 8). Moreover, ASI did not produce a copy of Schedule 8 in its native electronic format (Excel) with Mr. Hoffman's Expert Witness Report. Husch Dec, p. 2, ¶ 2.

*On August 20, 2014, shortly after receiving Mr. Hoffman's Expert Witness Report, the Sage Defendants requested ASI to produce Schedule 8 to Mr. Hoffman "in native format."* Husch Dec, Ex B (8/20/14 Cooper email). On the same day, Zilog requested that ASI produce "the data or other information considered by [Mr. Hoffman] in forming [his] opinions . . . ." Husch Dec, Ex C (8/20/14 Husch email). However, to this day, ASI has failed or refused to produce a copy of Schedule 8 in its native electronic Excel format. Husch Dec, pp. 2-4, ¶¶ 2, 8(a), and 10.

Schedule 8, as produced by ASI, is three hard copy pages of an Excel spreadsheet entitled "American Semiconductor, Inc. Income Statement Data." Husch Dec, Ex A (Schedule 8). It contains extensive ASI financial data that provided a significant basis for Hoffman's loss calculations, in that the data utilized from Schedule 8 accounted for over 25% of the \$1,182,488 in lost revenue asserted by Mr. Hoffman. Reinstein Dec, p. 3, ¶ 9. Schedule 8 encompasses 228 lines of data presenting financial statement descriptions and dollar values in 10 different columns. *Id.* The ultimate source of this data is apparently a series of ASI's quarterly and annual income statements covering 2010 and 2011.<sup>2</sup> However, much of the data were

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<sup>2</sup> Schedule 8 says: "*Source: ASI 2010 & 2011 Income Statements.*" Husch Dec, Ex A (Schedule 8) (emphasis in original).

recombined and summarized in various groupings, such as “Fringe Rate,” “Commercial G&A (General and Administrative) Rate,” and the like, without identifying the sources of the data for the subtotals in the groupings or the formulas used to calculate those subtotals. Reinstein Dec, pp. 3-4, ¶ 10. In other words, one cannot determine by examining Schedule 8 what data was included in what groupings or the sources of that data. *Id.* In order to determine what data was included in what groupings, one must possess either (a) a copy of Schedule 8 in its native Excel format (which would enable the user to simply click on cells to determine the sources of the data) or (b) a key or legend showing the “formulas” used to calculate the subtotals in the various groupings. Reinstein Dec, p. 4, ¶ 12. Moreover, ASI did not produce either a copy of Schedule 8 in its native Excel format or the requisite key or legend with Mr. Hoffman’s report. Husch Dec, pp. 2-3, ¶¶ 2 and 8(a).

Since ASI did not produce either a copy of Schedule 8 in its native Excel format or the requisite key or legend before Mr. Reinstein’s Expert Witness Report was due on September 3, 2014, Mr. Reinstein stated the following regarding Schedule 8 in his Expert Witness Report:

On Schedule 8 to his report, Hoffman reconfigures and assigns various costs to his determination of fringe benefits and his general & administrative allocation. From the limited data provided with Hoffman’s report, I am unable to replicate his calculations and allocation of costs, which form the basis of amounts used to build-up the alleged lost revenues.

Reinstein Dec, Ex A (Expert Witness Report), p 3.

Although ASI’s failure or refusal to provide Schedule 8 in its native Excel format prevented Mr. Reinstein from replicating Mr. Hoffman’s lost profits analysis before Mr. Reinstein issued his own Expert Witness Report on September 3, 2014, Mr. Reinstein did, in his September 3, 2014, Expert Witness Report, expressed numerous opinions regarding the

opinions expressed in Mr. Hoffman's Expert Witness Report. For example, Mr. Reinstein noted the following:

1. **Direct Labor Costs.** In this section of his Expert Witness Report, Mr. Reinstein stated: "On Schedules 2 and 3 to his report, Hoffman makes no allocation of incremental Labor costs" and that "These additional costs would reduce [ASI's] alleged loss in a similar fashion to that illustrated in Hoffman's calculations on Schedules 4 and 5." Reinstein Dec, Ex A (Expert Witness Report), p. 3.

2. **Fringe Benefits.** In this section of his Expert Witness Report, Mr. Reinstein stated: "[I]t appears that when he [Hoffman] calculates his general and administrative allocation he adds in an element referred to as 'indirect fringe allocation.' To the extent that these costs are already in fringe benefits, these costs are effectively duplicated." Reinstein Dec, Ex A (Expert Witness Report), p. 3.

3. **Design Tools Allocation.** In this section of his Expert Witness Report, Mr. Reinstein stated: "There are several issues that raise questions about this portion of Hoffman's calculations," whereby Hoffman claimed damages of \$547,670 related to design tools. Reinstein Dec, Ex A (Expert Witness Report), p. 3.

4. **General & Administrative Allocation.** In this section of his Expert Witness Report, Mr. Reinstein stated: "It is unclear from the data provided, how Hoffman arrives at his general and administrative allocation rate [of 26.48%]," noting that Hoffman did not identify the specific costs used to build-up the rate and that "his [Hoffman's] analysis of ASI's losses are overstated" because Hoffman apparently did not include variable costs in his analysis and also because, as noted above, "it appears that certain costs have been included in both fringe benefits and in general and administrative expenses, effectively duplicating the impact of these



costs in Hoffman's loss analysis." Reinstein Dec, Ex A (Expert Witness Report), p. 4. (In other words, Mr. Hoffman included variable costs as a component of his "build-up" of *lost revenue*, but did not include variable costs in the expenses he subtracted from lost revenue to arrive at *lost profit*. Reinstein Dec, p. 5, ¶ 17.)

5. **Profit Allocation.** In this section of his Expert Witness Report, Mr. Reinstein noted that "Hoffman's calculations utilize a 17% add on cost as a profit allocation on the Project," despite the fact that ASI's average profits from all operations between 2010 and 2012 were only 5.2% per year, and Mr. Reinstein characterized Hoffman's alleged 86.7% lost profit margin on the Zilog project as "an inordinately high profit margin" and "a dramatic and abnormal result." Reinstein Dec, Ex A (Expert Witness Report), pp. 4-5.

On October 30, 2014, Zilog took Mr. Hoffman's deposition pursuant to a Notice of Deposition Duces Tecum of Richard S. Hoffman, CPA, ABV. Husch Dec, Ex F (Hoffman Depo Notice). In that deposition notice, Zilog requested Mr. Hoffman to produce "his entire file relative to this action" at his deposition scheduled for October 30, 2014. Husch Dec, Ex F (Hoffman Depo Notice), p. 2. In addition, on October 20, 2014, defendants for at least the second time, requested ASI to produce Schedule 8 "in native Excel format." Husch Dec, Ex D (10/20/14 email). However, neither Mr. Hoffman nor ASI produced Schedule 8 in its native Excel format. (Nor has ASI provided a copy of Mr. Hoffman's hard copy file, despite its agreement to do so within a reasonable time after Mr. Hoffman's deposition. See Husch Dec, p. 2, ¶ 8(b) and Ex G (Hoffman Depo), 91:13-21.)

Because ASI refused to produce Schedule 8 in its native Excel format, defense counsel was required to examine Mr. Hoffman at great length during his deposition on October 30, 2014, to determine what formulas were used to calculate each of the dozens of

categories. Husch Dec, Ex G (Hoffman Depo), 55:3 – 75:21; 93:2 – 96:19. Furthermore, Mr. Hoffman, testifying from memory, was not always consistent in describing the formulas that had been used to make the calculations reflecting various figures on Schedule 8, *even though he was using his legend to answer questions about the calculations*. For example, Mr. Hoffman testified at one point that he did not know how the figures for “Fringe Benefits” on Schedule 8 were calculated:

Q. (BY MR. HUSCH) *And then how is the “Fringe Benefits” figure or figures on page 2 of Schedule 8 calculated?*

A. [BY MR. HOFFMAN] (Reviewing document.) *I don’t know.*

Q. [BY MR. HUSCH] *Is that something that your log or key or legend would tell us how it was calculated?*

A. [BY MR. HOFFMAN] *No. I’m looking at that. That’s how I’m giving you the answers that I’ve been giving you is I’m looking at my legend. But if I looked in the Excel file I could tell.*

Q. [BY MR. HUSCH] *And the Excel file is what you have at the office?*

A. [BY MR. HOFFMAN] *Yes, sir.*

Husch Dec, Ex G (Hoffman Depo), 61:14 – 62:1 (emphasis added). At another point, Mr. Hoffman testified that he did not know how the “Indirect Fringe Allocation” on Schedule 8 was calculated:

Q. [BY MR. HUSCH] *How is “Indirect Fringe Allocation” calculated?*

A. [BY MR. HOFFMAN] *I don’t know.*

MR. HUSCH: *Just as an aside, John, I’m hoping these “I don’t knows” have convinced you that I’m entitled to the electronic Excel native format document.*

MR. ZARIAN: Well, if you say you want to make that point, I'm not sure, you know, that you need to go any further. I do understand your point.

Husch Dec, Ex G (Hoffman Depo), 68:2-10 (emphasis added).

Moreover, the Excel file containing Schedule 8 to Mr. Hoffman's Expert Witness Report was readily available to Mr. Hoffman, and Mr. Hoffman even offered during his deposition to provide Zilog with a copy of the Excel file:

Q. [BY MR. HUSCH] *Who do you believe has an electronic copy of Schedule 8?*

A. [BY MR. HOFFMAN] *I think I do. I mean, I don't on my person, but I think I can send you an electronic.*

Q. [BY MR. HUSCH] You think you have that at Lone Peak?

A. [BY MR. HOFFMAN] Yes, sir.

Q. [BY MR. HUSCH] Okay.

A. [BY MR. HOFFMAN] I'm certain we do.

Q. [BY MR. HUSCH] Okay.

MR. HUSCH: Are you willing to produce that, Counsel?

MR. ZARIAN: I'll surely take it up with you. Did you not --

MR. HUSCH: I've asked for it numerous times and I've never received it.

MR. ZARIAN: Did you not print this from the electronic copy?

MR. HUSCH: No.

MR. ZARIAN: This is a blow-up of the hard copy?

MR. HUSCH: This is a blow-up of the indecipherable hard copy that I was provided.

MR. ZARIAN: Well, it's a good blow-up, I've got to say that. Did you request that from Kennedy already?

MR. HUSCH: We have.

MR. ZARIAN: All right. Let me follow up.

Husch Dec, Ex G (Hoffman Depo), 55:3 – 56:4 (emphasis added); *id.*, 61:14 – 62:1. However, to this day, ASI has not produced a copy of Schedule 8 in its native Excel format. Husch Dec, pp. 2-3, ¶¶ 2 and 8(a). (On the other hand, it should be noted that during Mr. Reinstein's deposition, ASI requested the Excel files used by Mr. Reinstein in his analysis, and defense counsel delivered those files in electronic format to ASI's counsel before Mr. Reinstein's deposition was concluded. Husch Dec, Ex H (Reinstein Depo), 116:19 – 118:6, 131:6-13, and 168:8 – 169:1.)

During Mr. Reinstein's deposition on November 5, 2014, ASI provided Mr. Reinstein with Exhibit 396, containing some Excel formulas regarding Mr. Hoffman's report, however, ASI continued to refuse to produce Schedule 8 in its native Excel format. Husch Dec, Ex H (Reinstein Depo), 37:25 – 40:11; Husch Dec, ¶¶ 9(d) and 10. Nevertheless, using the information regarding the Excel formulas provided by Mr. Hoffman during his deposition on October 30, 2014, and by ASI during Mr. Reinstein's deposition on November 5, 2014, Mr. Reinstein was able replicate some of the calculations underlying Schedule 8 and issued his supplemental report dated November 24, 2014. Reinstein Dec, pp. 4-5, ¶¶ 14, 17 and 18.

### III. ARGUMENT

**A. ASI—the Party that Refused to Produce the Underlying Information Necessary for Expert Reinstein to Complete His Analysis—Cannot Demonstrate the Prejudice Necessary to Exclude Reinstein's Testimony Under Rule 26 or 37.**

“Idaho law specifically contemplates that expert testimony can change after the initial disclosure.” *Edmunds v. Kraner*, 142 Idaho 867, 874, 136 P.3d 338, 345 (2006). “Idaho Rule of Civil Procedure 26(e)(1)(B) requires that litigants supplement discovery responses as to

‘the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person’s testimony.’” *Id.*

“Rule 26 requires that parties seasonably supplement their discovery responses to any question directly addressed to ‘the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person’s testimony.’” *Duspiva v. Fillmore*, 154 Idaho 27, 34-35, 293 P.3d 651, 658-59 (2013); I.R.C.P. 26(e)(1)(B). “If a party fails to seasonably supplement the responses as required in this Rule 26(e), the trial court may exclude the testimony of witnesses or the admission of evidence not disclosed by a required supplementation of the responses of the party.” *Id.*; I.R.C.P. 26(e)(4). “However, ‘[w]hether to exclude undisclosed expert testimony pursuant to I.R.C.P. 26(e)(4) is committed to the sound discretion of the trial court.’” *Duspiva*, 154 Idaho 34, citing *Schmechel v. Dille*, 148 Idaho 176, 180, 219 P.3d 1192, 1196 (2009). “The ‘may’ in Rule 26 gives the trial court the ability to weigh the prejudice of undisclosed testimony versus the value of the testimony, but does not require exclusion of testimony not properly disclosed.” *Duspiva*, 154 Idaho 34.

In addition, ASI itself has recognized that a party may amend, modify, delete from or add to by supplementation, its initial disclosure “as further information is developed through discovery.” In American Semiconductor, Inc.’s Rebuttal Expert Disclosure, ASI specifically stated:

ASI has made a good-faith effort to set forth the substance of the opinions to which the above-named rebuttal expert witnesses will testify, as well as the documents and information relied upon. ***It is, however, impossible to specifically set forth every opinion these witnesses will express and the exact manner in which those opinions will be expressed.*** ASI reserves the right to elicit additional testimony and opinions from the above-designated rebuttal experts based upon information subsequently produced,

information gleaned during further depositions and discovery, and any subsequent opinions or information developed by the above-named experts from other sources. *As it is anticipated that defendants may obtain the deposition testimony of the above-named experts, should they elect to do so, this expert disclosure should not be assumed to be all-inclusive in nature. ASI also reserves the right to amend, modify, delete from or add to by supplementation, this disclosure as further information is developed through discovery.*

Declaration of Gerald T. Husch in Opposition to Plaintiff's Motion In Limine No. 4 Re: Defense Expert Monte Dalrymple (Husch Dec), Exhibit A (American Semiconductor, Inc.'s Rebuttal Expert Disclosure), p. 7 (emphasis added).

Here, ASI—the party that caused the delay—cannot credibly claim prejudice. Mr. Reinstein's expert report was due on September 3, 2014 (less than a month after ASI's served its damages expert Hoffman's report). Prior to the issuance of Mr. Reinstein's report, defendants requested that ASI produce Schedule 8 to its expert Richard Hoffman's report in its native format. Husch Dec, pp. 2-3, ¶¶ 3, 4, and 5 and Exs B, C, and D. ASI did not do so. *See, e.g.,* Husch Dec, p. 4, ¶ 10. ASI was aware—at the time Mr. Reinstein issued his initial expert report—that significant undisclosed information (Schedule 8) prevented Mr. Reinstein from fully analyzing the accuracy of Mr. Hoffman's lost profit analysis and opinions. *See* Reinstein Dec., Ex. A, p. 3.

On October 30, 2014, Zilog deposed ASI's expert Hoffman. During the deposition, Zilog requested, several times on the record, that Mr. Hoffman produce Schedule 8 so that Zilog and Zilog's expert could evaluate the basis for Mr. Hoffman's lost profits calculations. Husch Dec, Ex G (Hoffman Depo), 55:6 – 56:3 and 61:14 – 62:1. Despite Mr. Hoffman's willingness to turn over Schedule 8, and counsel's agreement to consider it, ASI made the tactical decision *not* to disclose Schedule 8 in native format. Husch Dec, p. 3, ¶ 8(a)

and Ex G (Hoffman Depo), 55:3 – 56:3 and 61:14 – 62:1. ASI then deposed Mr. Reinstein a mere six (6) days later on November 5, 2014. At that deposition, Mr. Reinstein testified that without the underlying data available from Schedule 8, he would need to review the testimony of Mr. Hoffman (which was not yet available) to attempt to re-create the data. *See* Husch Dec, Ex H (Reinstein Depo), 33:5 – 34:1. Mr. Reinstein’s supplemental report does just that. ASI can hardly now claim surprise or prejudice. The supplemental opinions are those that could not have been done unless and until either: ASI produced Schedule 8 in its native electronic format or Mr. Reinstein reviewed the deposition testimony of Mr. Hoffman as to how the subtotals on Schedule 8 were calculated.

To the extent that ASI claims, prejudice, Zilog agrees to work with ASI to schedule a time for ASI to re-depose Mr. Reinstein as to the opinions contained in his supplemental report.

**B. Neither Defendants Nor Mr. Reinstein Has Engaged in Any Improper Litigation Tactics.**

ASI complains that defendants made the “strategic decision” not to ask Mr. Reinstein to calculate ASI’s alleged damages before he issued his Expert Witness Report and that defendants engaged in “improper” “litigation tactics” by submitting Mr. Reinstein’s supplemental report stating that ASI’s “alleged losses – to the extent they are applicable – are more appropriately reflected in the amount of approximately \$121,000,” rather than the \$1,025,087 lost profit figure put forth by Mr. Hoffman. The fact of the matter is that when Mr. Reinstein was retained by defendants in this matter, he was asked to analyze ASI’s damages expert and assist in the defense of ASI’s damages claims. Reinstein Dec, p. 3, ¶ 7. Because ASI refused to timely produce the data on which Mr. Hoffman’s opinions were based, Mr. Reinstein was not able to complete his analysis before his deposition and did not know where his analysis

would lead him. Reinstein Dec, p. 4, ¶¶ 11-13. It was not until ASI finally produced the data on which Mr. Hoffman's opinions were based that Mr. Reinstein was able to complete his analysis and estimate the amount by which Mr. Hoffman had overstated ASI's alleged damages.

Reinstein Dec, pp. 5-6, ¶ 20. Neither Mr. Reinstein nor the defendants engaged in any improper litigation tactics. It was ASI, by repeatedly refusing to produce the data upon which Mr. Hoffman's opinions were based, that has engaged in improper litigation tactics.

In other words, although Mr. Reinstein's specific comment that a loss, if at all applicable was more appropriately reflected in an amount of approximately \$121,000, rather than Mr. Hoffman's \$1,025,087 figure, may advance a point that was not explicitly made in Mr. Reinstein's Expert Witness Report, Mr. Reinstein had no way to know where his analysis would lead without a clear understanding of the combinations of data reflected on Hoffman's Schedule 8. Reinstein Dec, pp. 5-6, ¶ 20. Mr. Reinstein could not have included a complete analysis of Mr. Hoffman's Schedule 8 in his original Expert Witness Report because ASI inappropriately hindered and directly interfered with his analysis by refusing to provide Schedule 8 in its native Excel format. *Id.* The defense has not engaged in any "dirty tricks" as ASI would have the Court believe.

**C. Neither Defendants Nor Mr. Reinstein Has Hidden the Fact that Mr. Reinstein Would Have to Supplement His Initial Expert Witness Disclosure Because ASI Refused to Produce All of the Data upon Which Mr. Hoffman's Opinions Were Based.**

In his deposition, Mr. Reinstein never hid from ASI his intent to analyze the data underlying Schedule 8.

Q. [BY MR. ZARIAN] Have you as of this point in time formed or reached any opinions or conclusions as an expert witness other than those set forth in your report, Exhibit No. 394?

MR. HUSCH: Objection, asked and answered.



THE WITNESS: Nothing specific. *You know, I wanted to do some additional analysis on what's referred to as Schedule 8 in Mr. Hoffman's report, but I haven't been able to obtain a copy that's legible enough to work through.*

Husch Dec, Ex H (Reinstein Depo), 32:8 – 17 (emphasis added). Similarly, Mr. Reinstein testified:

Q. (BY MR. ZARIAN) The additional analysis you say you'd like to do, you said that's with respect to Schedule 8 from Mr. Hoffman's report?

A. [BY MR. REINSTEIN] Yes.

Q. [BY MR. ZARIAN] Have you actually done that analysis?

A. [BY MR. REINSTEIN] No.

Q. [BY MR. ZARIAN] And what specifically is the additional analysis that you say you would like to do?

A. [BY MR. REINSTEIN] Well, a couple of things. I have attempted to recreate his cost summaries, which was some of the topic for his deposition that was held a few days ago. I've not had a chance to recreate those. I also wanted to go through and take a look at the costs from the perspective of variable versus fixed costs to see which might be appropriate to apply against the asserted lost revenues.

Q. [BY MR. ZARIAN] *And the reason you say you haven't done those two things is because you didn't have a legible copy of Schedule 8?*

A. [BY MR. REINSTEIN] *Well, it's both -- a legible copy, but also I wasn't able to go through and recreate the subtotals within those schedules.*

Husch Dec, Ex H (Reinstein Depo), 33:5 – 34:1 (emphasis added).

Mr. Reinstein also clearly testified that he “wanted to deal with the data from Schedule 8 as a complete set of data,” rather than conduct his analysis “piecemeal” by analyzing the data piece-by-piece, whenever defense counsel could pry a piece of the data from ASI. For example, Mr. Reinstein testified:

Q. (BY MR. ZARIAN) Let's take a look at "General & Administrative Allocation."

A. [BY MR. REINSTEIN] Okay.

Q. [BY MR. ZARIAN] *You say here, quote: "It is unclear from the data provided how Hoffman arrives at his general and administrative allocation rate." Have I read that correctly?*

A. [BY MR. REINSTEIN] Yes.

Q. [BY MR. ZARIAN] *What data are you referring to here?*

A. [BY MR. REINSTEIN] *Schedule 8.*

Q. [BY MR. ZARIAN] Anything else?

A. [BY MR. REINSTEIN] No.

Q. [BY MR. ZARIAN] All right. So, is it your testimony that based on Schedule 8 and additional information provided by Mr. Hoffman in his deposition, you are unable to tell how he derived his G&A allocation rate?

A. [BY MR. REINSTEIN] Well, at this point without significant additional time devoted to trying to recreate those calculations, yes.

Q. [BY MR. ZARIAN] *Have you made any determination of what costs that you believe were included were or were not variable?*

A. [BY MR. REINSTEIN] *I have not at this point because I wanted to deal with the data from Schedule 8 as a complete set of data rather than piecemeal the calculations.*

Husch Dec, Ex H (Reinstein Depo), 143:20 – 144:19 (emphasis added). Similarly, Mr. Reinstein indicated that if ASI would provide Schedule 8 in its native Excel format, he would analyze the data and tell ASI what costs Mr. Hoffman should have allocated but had not:

Q. (BY MR. ZARIAN) *Can you tell me anything else about any variable costs that you believe should have been allocated by Mr. Hoffman but were not?*

...

THE WITNESS: *Well, as I said, you know, I haven't conducted that analysis because I didn't want to do it piecemeal. If I could replicate his Excel schedule, then that's what I would do is go through and do that analysis. I would be happy to tell you what those are.*

Husch Dec, Ex H (Reinstein Depo), 148:25 – 149:9 (emphasis added). Likewise, Mr. Reinstein indicated that if he had access to the data underlying Schedule 8, he would analyze all the costs in Schedule 8 and that information “would drive the rest of [his] analysis” in this case:

Q. (BY MR. ZARIAN) *So, with reference to Schedule 8, tell me what categories you would consider as part of that analysis to determine whether or not any variable costs should have been allocated by Mr. Hoffman but were not.*

A. [BY MR. REINSTEIN] *I would look at all of the costs.*

Q. [BY MR. ZARIAN] All right. So, you would look at cost of goods sold?

A. [BY MR. REINSTEIN] Potentially.

Q. [BY MR. ZARIAN] You would look at wafers?

A. [BY MR. REINSTEIN] Well, I don't know. I mean, you can go down every line and my answer is going to be exactly the same. *Until I have an opportunity to do an analysis and see what the relationship in the costs are over time to revenue, I'm not going to be able to answer your question.*

Q. [BY MR. ZARIAN] But what additional information would you need to do that beyond what's in Schedule 8?

A. [BY MR. REINSTEIN] Well, Schedule 8 does provide the information. *The problem is that I can't really do much analysis until I can replicate how Hoffman has put together his subtotals.*

Q. [BY MR. ZARIAN] *Well, let's say Hoffman hadn't done anything at all and you were looking at the question of whether or not any variable costs should be factored in. Where would you start?*

A. [BY MR. REINSTEIN] *Well, I would start with this schedule of information. You know, I might also add that I have concerns about whether the information reflected on Schedule 8, which*

*comes from an Excel schedule presumably outside the primary accounting system, is a complete and accurate representation of their underlying financial records.*

Q. [BY MR. ZARIAN] I'm sorry, where would you start?

A. [BY MR. REINSTEIN] Well, where I would start -- if I started with Schedule 8, the first thing I would want to do is make sure that information reconciles to the overall financial statements for ASI.

Q. [BY MR. ZARIAN] Sure. Then *what would you actually do to determine what variable costs should be included here that perhaps were not by Mr. Hoffman?*

A. [BY MR. REINSTEIN] Well, then *I would go through each cost and determine first of all, is it relevant to the project that we're analyzing or the activity that we're analyzing? And then determine based upon that cost profile related to revenue, is that a cost that varies over time?*

Q. [BY MR. ZARIAN] *Anything else?*

A. [BY MR. REINSTEIN] *Well, there's potentially other things that might come into play, but those would be the primary things where I would start. And then based upon that information, that would drive the rest of the analysis.*

Q. *Have you done any of that work in this case?*

A. [BY MR. REINSTEIN] *I have -- other than just in a very general sense, no, because I didn't, again, want to do this piecemeal. I wanted to make sure that I had all of the data available so that I didn't start and find out that additional information was available that would change what I had done.*

Husch Dec, Ex H (Reinstein Depo), 149:10 – 151:18 (emphasis added).

Finally, at the end of Mr. Reinstein's deposition, defendants objected to ASI's continued failure to produce Schedule 8 in its native format, stating:

**MR. HUSCH:** *I would just like to state for the record that we have still not been given a copy of Schedule 8 to Mr. Hoffman's report in its native format and, therefore, reserve the right to come forward with further opinions from our witness,*

***Mr. Reinstein, regarding any issues that arise out of that failure to produce that document.***

MR. ZARIAN: Okay.

***MR. COOPER: Join.***

Husch Dec, Ex H (Reinstein Depo), 169:2-10 (emphasis added).

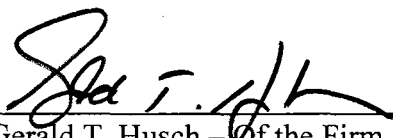
In sum, Mr. Reinstein never hid from ASI the fact that he had not completed his analysis because he did not have all of the information upon which Mr. Hoffman had relied for his opinions. There was no way that Mr. Reinstein could have known where that information would have led him, but he made it clear to ASI in his deposition that that information would drive the rest of his analysis and that he would provide his analysis to ASI.

#### **IV. CONCLUSION**

Based upon the foregoing, Zilog respectfully requests the Court to deny Plaintiff's Motion in Limine No. 13.

DATED this 3rd day of December, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 2014, I caused a true and correct copy of the foregoing **ZILOG, INC.'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 13 TO PRECLUDE JOINTLY RETAINED DEFENSE EXPERT DENNIS REINSTEIN'S [ALLEGEDLY] UNTIMELY DISCLOSED EXPERT OPINIONS** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

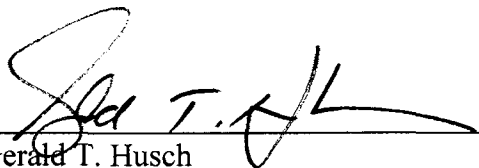
☒ U.S. Mail, Postage Prepaid  
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☐ Facsimile

Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
12550 W. Explorer Dr., Suite 100  
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Facsimile (208) 345-4461  
*Attorneys for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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John N. Zarian  
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Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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Gerald T. Husch

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
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gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 446

DEC 03 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DECLARATION OF DENNIS  
REINSTEIN, CPA/ABV, ASA, CVA, IN  
OPPOSITION TO PLAINTIFF'S  
MOTION IN LIMINE NO. 13 TO  
PRECLUDE JOINTLY RETAINED  
DEFENSE EXPERT DENNIS  
REINSTEIN'S UNTIMELY  
DISCLOSED EXPERT OPINIONS**

**DECLARATION OF DENNIS REINSTEIN, CPA/ABV, ASA, CVA, IN OPPOSITION TO  
PLAINTIFF'S MOTION IN LIMINE NO. 13 - 1**

Client:3640223.2

001400

Dennis R Reinstein, CPA/ABV, ASA, CVA, declares as follows:

1. I am a partner in the Boise accounting and consulting firm of Coles Reinstein, PLLC.
2. I am a certified public accountant (CPA) within the state of Idaho and have been so licensed since 1976.
3. I hold several advanced professional certifications related to the valuation and financial analysis of business interests. I am a member of the National Association of Certified Valuators and Analysts and hold their Certified Valuation Analyst (CVA) designation which I obtained in 1995; I am also a member of the American Institute of Certified Public Accountants and hold their Accredited in Business Valuation (ABV) designation which I obtained in 2001; and I am a member of the American Society of Appraisers and hold their Accredited Senior Appraiser (ASA) designation which I obtained in 2003.
4. My professional experience includes valuation and operational analysis of businesses and professional practices and the preparation of business income tax returns and financial statements for a variety of business enterprises. I have also managed and conducted financial audits of a variety of business enterprises to opine on their presentation in conformity with generally accepted accounting principles. My professional experience also includes assistance to clients with the analysis of business operations and significant business transactions. My complete resume is included in the document attached hereto as **Exhibit A**.
5. I make this declaration based upon my personal knowledge and to the best of my information and belief. To the extent any of the following represents a statement of opinion, any opinion is held to a reasonable degree of certainty based upon my experience and training as an accountant.



6. Attached as **Exhibit A** is a true and correct copy of my Expert Witness Report submitted in this matter on September 3, 2014, and subsequently marked as Deposition Exhibit 394 to my deposition taken in this matter on November 5, 2014.

7. As I explained in my September 3, 2014 Report, "I was engaged by Cooper & Larsen Chartered and Moffatt Thomas Barrett Rock & Fields Chartered on behalf of Sage Silicon Solutions and Zilog, Inc. to evaluate the alleged economic losses by American Semiconductor, Inc., as calculated by Richard S. Hoffman and Stephen Holland." I further explained that "[a]s additional information or testimony becomes available, I may find it appropriate to revise or supplement my opinions, analysis and conclusions stated herein."

8. Mr. Hoffman's Expert Witness Report dated August 4, 2014 included eight (8) schedules supporting Mr. Hoffman's opinion that ASI had lost profits of \$1,025,089 based on lost revenues of \$1,182,488. Schedule 8, attached to the report I received, was provided in hard copy and portions of Schedule 8 were not legible.

9. Schedule 8, as produced by ASI, and attached as Exhibit A to the Declaration of Gerald T. Husch filed concurrently herewith, is three hard copy pages of an Excel spreadsheet entitled "American Semiconductor, Inc. Income Statement Data." Schedule 8 encompasses 228 lines of data presenting financial statement descriptions and dollar values in 10 different columns. It contains extensive ASI financial data that provided a significant basis for Hoffman's loss calculations, in that the data utilized from Schedule 8 accounted for over 25% of the \$1,182,488 in lost revenue asserted by Mr. Hoffman.

10. The ultimate source of this data is apparently a series of ASI's quarterly and annual income statements covering 2010 and 2011. However, much of the data were recombined and summarized in various groupings, such as "Fringe Rate," "Commercial G&A (General and

Administrative) Rate,” and the like, without identifying the sources of the data for the subtotals in the groupings or the formulas used to calculate those subtotals. In other words, I could not determine by examining Schedule 8 what data was included in what groupings or the sources of that data.

11. On Schedule 8 to his report, Hoffman reconfigures and assigns various costs to his determination of fringe benefits and his general & administrative allocation. From the limited data provided with Hoffman’s report, I was unable, in preparing my September 3, 2014 Report or in preparing for deposition, to replicate Mr. Hoffman’s calculations and allocation of costs, which form the basis of amounts used to build-up ASI’s alleged lost revenues.

12. In order for me to determine what data was included in what groupings, it was necessary for me to possess either (a) a copy of Schedule 8 in its native Excel format (which would enable the me to simply click on cells to determine the sources of the data) or (b) a key or legend showing the “formulas” used to calculate the subtotals in the various groupings. I was not provided with a copy of Schedule 8 in native format. Prior to my deposition which occurred November 5, 2014, I was not provided with a key or legend.

13. As I explained in my September 3, 2014 Expert Witness Report, my analysis of Mr. Hoffman’s alleged damage calculations was severely hindered by my inability to replicate the calculations used to calculate the subtotals in the various groupings on Schedule 8 to Mr. Hoffman’s Expert Witness Report.

14. Ultimately, utilizing the information regarding the Excel formulas provided by Mr. Hoffman during his deposition on October 30, 2014; in conjunction with a legend (first made available to me during my deposition on November 5, 2014), I was able replicate Mr. Hoffman’s calculations underlying Schedule 8.

15. The legend provided to me was a hard copy printout of the formulas for each data cell contained in Schedule 8, which then required me to enter the formulas into my own re-created excel file and test the formulas to make sure the result was consistent with Hoffman's Schedule 8. It likely took ASI longer to print the formulas than it would have to just provide the Excel file into which the formulas were already embedded.

16. I have never received a copy of Schedule 8 to Hoffman's Expert Witness Report in native electronic (Excel) format, which, when accessed, would have illustrated the unproduced data.

17. As a result of my ability to re-create Mr. Hoffman's excel file and test the formulas, I was able to complete my analysis of Mr. Hoffman's alleged lost damage calculations. As part of that analysis, I was able to determine that Mr. Hoffman, as part of his General & Administrative Allocation, included variable costs as a component in his build-up of lost revenue, but did not include variable costs in the expenses he subtracted from lost revenue to arrive at his lost profit.

18. My completed analysis is included in my Supplemental Report, dated November 24, 2014. It was not until ASI finally produced the data on which Mr. Hoffman's opinions were based that I was able to complete my analysis and estimate the amount by which Mr. Hoffman had overstated ASI's alleged damages.


19. Attached hereto as **Exhibit B** is a true and correct copy of my supplemental expert witness report dated November 24, 2014.

20. Although my specific comment in my Supplemental expert witness report that a loss, if at all applicable was more appropriately reflected in an amount of approximately \$121,000, rather than Mr. Hoffman's \$1,025,087 figure, may advance a point that was not

explicitly made in my initial Expert Witness Report, there was no way to know where the analysis would lead without a clear understanding of the combinations of data reflected on Hoffman's Schedule 8. I could not have included a complete analysis of Mr. Hoffman's Schedule 8 in my original Expert Witness Report of September 3, 2014 because I was not provided with Schedule 8 in its native Excel format or the requisite key or legend before that date.

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 3rd day of December, 2014.

  
Dennis Reinstein

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 2014, I caused a true and correct copy of the foregoing **DECLARATION OF DENNIS REINSTEIN, CPA/ABV, ASA, CVA, IN OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 13 TO PRECLUDE JOINTLY RETAINED DEFENSE EXPERT DENNIS REINSTEIN'S UNTIMELY DISCLOSED EXPERT OPINIONS** to be served by the method indicated below, and addressed to the following:

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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

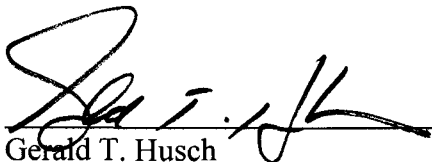
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Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
Gerald T. Husch

# **EXHIBIT A**

## EXPERT WITNESS REPORT

In the Matter of

American Semiconductor, Inc.  
vs.  
Safe Silicon Solutions, LLC, et al.

Case No. CV OC 1123344

In the District Court of the Fourth Judicial District of the State of Idaho  
in and for the County of Ada

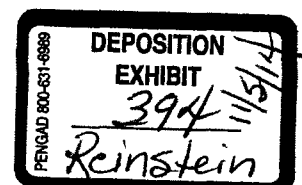
Prepared for:

Cooper & Larsen, Chartered  
and  
Moffatt, Thomas, Barrett, Rock &  
Fields, Chartered

Prepared by:

Dennis R. Reinstein, CPA/ABV, ASA, CVA  
Coles Reinstein, PLLC  
960 Broadway Avenue, Suite 415  
Boise, ID 83706

September 3, 2014



001408

## INTRODUCTION

I was engaged by Cooper & Larsen Chartered and Moffatt, Thomas, Barrett, Rock & Fields, Chartered on behalf of the Sage Silicon Solutions, LLC and Zilog, Inc. to evaluate the alleged economic losses asserted by American Semiconductor, Inc., as calculated by Richard S. Hoffman and Stephen Holland. These alleged losses are associated with work performed pursuant to an Independent Contractor Services Agreement between Sage Silicon Solutions, LLC and Zilog, Inc.

Throughout this report I may abbreviate various references as follows:

<u>Party/Term</u>	<u>Abbreviation</u>
Sage Silicon Solutions, LLC	Sage
Zilog, Inc.	Zilog
Zilog's development of the Z8F6480 Microcontroller	Project
Clare, Inc.	Clare
American Semiconductor, Inc.	ASI
Richard S. Hoffman, CPA/ABV	Hoffman
Stephen Holland	Holland

Data relied upon in support of the opinions contained herein are as noted within each section and/or as listed in Table 1, which follows the opinions.

In addition to documents referenced in my report, I may summarize information contained in such documents in exhibit form to assist the explanation of my analysis and opinions at trial.

As additional information or testimony becomes available, I may find it appropriate to revise or supplement my opinions, analyses and conclusions stated herein. I may also be called upon to provide testimony with regard to additional data or records and/or data received from or testified to by other parties and/or their witnesses.



Dennis R. Reinstein, CPA/ABV, ASA, CVA,

9/3/14

Date



## OPINION 1

Hoffman's calculations of alleged damages are unreliable and overstated.

This opinion is based upon:

### **General Comments**

- 1) Implicit in Hoffman's conclusion is an assertion that cost equates with market. Fundamental economic principles tell us that value is established by consumers of goods and services, not by the cost of the producer or provider.

Accordingly, merely summarizing ASI's alleged costs does not meet the threshold of reasonable economic certainty that ASI and Zilog would have entered into an agreement at the price asserted by Hoffman.

- 2) To complete a proper analysis of the alleged loss, one must also consider the alternate sources of design services that were available to Zilog.

- a) Monte Dalrymple notes in his expert report that:

*"The 6480 design is not unusually complex, and any number of experienced IC designers should have been able to do the job."*

- b) I understand that Monte Dalrymple, himself could have worked on the Project. In his report he notes that his billing rate is \$105 per hour.

- c) Work on the Project was being done by Clare at the same time that Sage was providing services. I understand from David Staab that Clare would have been available to complete some or all of the work undertaken by Sage. The fully loaded billing rate for Clare was \$95 per hour.

- d) Costs reflected in the "Zilog Business Case" range from \$84 per engineering hour to \$121 per engineering hour depending on the costs included.

- e) The costs incorporated into Hoffman's claim for ASI comes out at \$229 per engineering hour.

- 3) Hoffman makes a generalized reference to the "Zilog Business Case" which was produced as Exhibit 101 to the deposition of Charles Darrough. Through reference to this document Hoffman makes certain inferences which are speculative.

- a) He concludes, in effect, that Zilog's expected costs for this Project were so large that the differential between what Sage agreed to charge and what Hoffman believes ASI was entitled to charge would be immaterial and thereby not a concern to Zilog.

- b) Hoffman further implies that if Zilog had originally engaged ASI to provide the services, the Project would have been completed at less cost and in a shorter time frame. These assertions, based on subsequent events, which arise as a direct result of this dispute, are irrelevant to a proper economic analysis of this Project.

- 4) On Schedule 8 to his report, Hoffman reconfigures and assigns various costs to his determination of fringe benefits and his general & administrative allocation. From the limited data provided with Hoffman's report, I am unable to replicate his calculations and allocation of costs, which form the basis of amounts used to build-up the alleged lost revenues.

**Direct Labor costs.**

- 1) On Schedules 2 and 3 to his report, Hoffman makes no allocation of incremental Labor costs. His stated position is: "...the individuals were still employed by ASI. Those direct labor would already have been incurred, therefore the costs should not be removed."

He further states that: "Given that the same engineers would have performed the same work, albeit as employees of ASI, capacity was not any issue".

Insufficient supporting data has been provided to show that "excess" hours were available to support this assertion.

- 2) Conversations with the Sage principals indicate that they were already working full-time for ASI and that they would not have been willing to devote additional hours to ASI without additional compensation. Accordingly, it is unclear how this additional work would have been accomplished without additional pay to someone. These additional costs would reduce the alleged loss in a similar fashion to that illustrated in Hoffman's calculations on Schedules 4 and 5.

**Fringe Benefits.**

- 1) My comments noted above for direct labor costs would also apply to fringe benefits.
- 2) The wage rates utilized above for direct labor costs appear to be calculated based on an employees full annual compensation. The full annual compensation would include paid time off and holidays.

It appears that fringe benefit costs utilized by Hoffman in determining his fringe benefit rate include paid time off and holidays which effectively duplicate this cost element.

- 3) As noted above, Hoffman's calculation of fringe benefits appears to be inclusive of many costs. Further, it appears that when he calculates his general and administrative allocation he adds in an element referred to as "indirect fringe allocation". To the extent that these costs are already in fringe benefits, these costs are effectively duplicated.

**Design Tools Allocation.**

- 1) A significant portion of Hoffman's claim arises from an allocation of design tools with a base cost of \$204,870. This cost is identified on ASI 001823 - also marked as Exhibit 325. There are several issues that raise questions about this portion of Hoffman's calculations.
  - a) According to the deposition of Lorelli Hackler (61/8), (71/23) & (72/7) the values in Exhibit 325 were calculated off of a "quote" worksheet. Therefore Hoffman's base is not calculated on actual numbers but is, in effect, an estimate derived from another estimate.

As illustrated on ASI 003552 the quote and final profitability of the completed PHONO-D project were not the same.

- b) Hoffman does not provide any analysis to illustrate how the base cost of the design tools was determined or their proper application to his calculations.

Further, Hoffman's calculation presumes that the design tools cost component remains proportional, regardless of the number of engineering hours. Again, no basis or analysis is provided to support this rate assumption which allows this element of damages to grow to \$547,670.

To the extent that additional tools would be required to complete the Project, (which is highly likely based on information from other parties to this matter) those out-of-pocket costs faced by ASI would have to be deducted from Hoffman's loss analysis.

- 2) In her deposition, Lorelli Hackler (59/7) states that the PHONO-D project was representative of work required for the Zilog Project. Insufficient data and documentation have been provided to support this assertion.

As discussed and illustrated by David Roberts, William Tiffany and Monte Dalrymple, there were significant differences in the design tools available to ASI and those necessary to complete the critical components of the Project. Access to and implementation to these tools would likely have dramatically changed ASI's cost profile.

In addition to the likely cost impact, any lack of access to required design tools would have potentially prevented or limited ASI's ability to perform on the Project.

#### **General & Administrative Allocation.**

- 1) It is unclear from the data provided, how Hoffman arrives at his general and administrative allocation rate. The specific costs used to "build-up" the rate for which ASI would have billed out the Project, if awarded, are not identified. To the extent that his included costs are variable, and it appears that a significant portion may be so characterized, his analysis of ASI's losses are overstated.
- 2) As noted above under the discussion related to fringe benefits, it appears that certain costs have been included in both fringe benefits and in general and administrative expenses effectively duplicating the impact of these costs in Hoffman's loss analysis.

#### **Profit Allocation.**

Hoffman's calculations utilize a 17% add on to cost as a profit allocation on the Project.

- 1) The following table summarizes ASI financial data presented on ASI 003532.

	2009	2010	2011	2012	Combined
Revenues	1,708,572	3,940,766	4,321,533	3,095,341	13,066,212
Expenses	2,527,947	3,549,358	4,220,567	3,002,120	13,299,992
Pre-tax Profit	(819,375)	391,408	100,966	93,221	(233,780)
Profit %	-48.0%	9.9%	2.3%	3.0%	-1.8%

As can be seen from the above, increasing revenue does not always lead to an increase in profit, as measured by either an amount or a percent. Notwithstanding the discussion in my report above, if an average of the 2010 – 2012 time periods is calculated, the profit ratio for ASI was 5.2%. Assuming that ASI could have successfully negotiated the services and provided the required resources to complete the Project, a more realistic expectation for profit would have been in the range of 5% rather than the numbers generated by Hoffman and illustrated below.

- 2) According to Hoffman's calculations the Project would have generated the following financial return for ASI. For purposes of illustration, I have assumed that the 2,760 hours identified in the Zilog purchase orders would have been completed in 2011 and the additional 2,413 hours opined to by Holland, to complete the Project, would have been provided in 2012. The following table illustrates Hoffman's calculations:

	2009	2010	2011	2012	Combined
Hours	0	0	2,760.00	2,413.15	5,173.15
Revenues			629,823	552,665	1,182,488
Expenses			39,394	118,005	157,399
Pre-tax Profit	<u>0</u>	<u>0</u>	<u>590,429</u>	<u>434,660</u>	<u>1,025,089</u>
Profit %			93.7%	78.6%	86.7%

As can be seen from the above, virtually no expenses have been attributed to the Project creating an inordinately high profit margin.

- 3) If ASI had worked on the Zilog Project, and achieved the projections opined to by Hoffman, ASI's financial results would have looked as follows:

	2009	2010	2011	2012	Combined
Revenues	1,708,572	3,940,766	4,951,356	3,648,006	14,248,700
Expenses	2,527,947	3,549,358	4,259,961	3,120,125	13,457,391
Pre-tax Profit	<u>(819,375)</u>	<u>391,408</u>	<u>691,395</u>	<u>527,881</u>	<u>791,309</u>
Profit %	-48.0%	9.9%	14.0%	14.5%	5.6%

The above financial results, adjusted for Hoffman's alleged losses, show a dramatic and abnormal result from these hypothetical financial results for ASI. To the extent that hours are moved from one year to another, the alleged results move further away from historical performance.

#### SUPPORTING DATA

My opinion is based upon the above noted sources and information and/or documents identified in Table 1.

**OPINION 2**

Hoffman's makes reference to "Other Damages" in his report, but does not opine to any amount therein. These other alleged damages are unsubstantiated.

This opinion is based upon:

- 1) Documents produced by ASI and identified as ASI 003545, 3550 and 3551 refer to staffing costs over a 16 month period, however no data or other details have been provided to explain or support these amounts.

To the extent that this analysis purports to reflect a reduction in revenue, it is incomplete without any analysis of customer demand.

- 2) Any analysis of lost revenue is incomplete without an analysis of related costs. Reductions in revenue alone are not a proper measure of financial losses.

**SUPPORTING DATA**

My opinion is based upon the above noted sources and information and/or documents identified in Table 1.

**Table 1: Supporting Data**

- 1) Amended Complaint and Demand for Jury Trial.
- 2) Second Amended Complaint and Demand for Jury Trial.
- 3) Defendants' Verified Answer to Amended Complaint And Demand For Jury Trial, And Defendants' Affirmative Defenses And Counterclaims.
- 4) Plaintiff's Responses to Discovery Dated March 14, 2012 Requests.
- 5) Zilog, Inc.'s Answer to Plaintiff's Second Amended Complaint.
- 6) American Semiconductor, Inc.'s First Supplemental Response to Zilog's Sixth Request for Production.
- 7) Phone conversations with David Staab, William Tiffany and Evelyn Perryman.
- 8) Documents bates numbered:
  - ASI00001-26, 32, 37, 40, 45, 50, 55, 60, 125, 126, 2021
  - ASI01823
  - ASI003531 – ASI003532
  - Z000007 – Z000022
  - Z000031 – Z000052
  - Z001670
  - Z011578 – Z011588
  - SAGE003572
- 9) Deposition transcripts of:
  - Charles Darrough, dated 2/12/14
  - Douglas Hackler, dated 6/27/14
  - Lorelli Hackler, dated 8/27/14, along with exhibits
  - Dean Beck, dated 3/12/14
  - Richard Chaney, dated 6/25/14
  - Sonia Daley, dated 3/12/14
  - Lloyd Huynh, dated 2/12/14
  - Russell Lloyd, dated 5/5/14
  - Evelyn Perryman, dated 5/5/14
  - David Roberts, dated 2/11/14
  - Alan Shaw, dated 3/12/14
  - David Staab, dated 2/12/14 & 3/12/14
  - William Tiffany, dated 2/12/14 & 6/20/14
  - Dale Wilson, dated 6/26/14
  - Gyle Yearsley, dated 2/11/14

10) Expert Reports of:

Stephen Holland, dated 8/4/14  
Richard Hoffman, CPA/ABV, dated 8/4/14  
Monte Dalrymple, dated 9/1/14

11) Various emails, phone conversations and meetings with attorneys from Cooper Larsen and Moffatt Thomas.

12) Emails from David Roberts and William Tiffany related to ASI and Zilog tools.

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**Professional Qualifications**

---



**DENNIS R. REINSTEIN, CPA/ABV, ASA, CVA**

**Education:** University of Idaho  
BS Agri-business, 1974  
BS Business (Accounting), 1975

**Certification:** Licensed in Idaho as CPA, 1976  
CVA designation, 1995  
ABV designation, 2001  
ASA designation, 2003

**Career**

**Experience:** Coles Reinstein, PLLC  
Partner November, 2012 - Present  
  
Hooper Cornell, PLLC  
Partner January, 2002 - October 2012

**Presnell Gage Accounting & Consulting**

Firm-wide supervisory responsibilities for business consulting services and electronic data processing services

Boise office	
Partner	July, 1989 - December 31, 2001
Moscow office	
Partner-in-charge	October, 1983 - June, 1989
Lewiston office	
Partner	May, 1980 - September, 1983
Manager	1979 - 1980
Staff Accountant	1975 - 1978

**Professional experience includes:**

- (1) Valuation of small businesses and professional practices.
- (2) Assistance to clients with the analysis of business operations and significant business transactions. These include negotiations on purchase and sale of a business or business segments, including assistance with valuation of business entities.
- (3) Design and assist with implementation of financial accounting and control systems for various clients served by the firm.
- (4) Supervision of accounting and auditing services provided by the firm's professional staff and consultation on procedures and methods of providing client services.
- (5) Member of team conducting review of complex mainframe and microcomputer accounting systems.
- (6) Co-authored and presented eight-hour course on cash management. Presented other client educational seminars and seminars to other service professionals such as bankers and attorneys.
- (7) Duties as a partner-in-charge included the responsibility for managing an office and personnel in accordance with firm policies.

**DENNIS R. REINSTEIN, CPA/ABV, ASA, CVA (Continued)**

**Career  
Experience  
continued:**

Farmer's Home Administration - Assistant County Supervisor, 1974.

Duties included:

- (1) Evaluation of credit applications and preparation of application packages for review and approval.
- (2) Residential real estate and farm appraisals.

**Professional  
Memberships  
and Activities:**

Idaho Society of CPAs, current member

Past Chairman of Management of an Accounting Practice Committee

Prior Member of Committees on

Public Relations

Continuing Professional Education

Relations with Bankers

Northern Chapter of Idaho Society of CPAs, past president

American Institute of CPAs, current member

American Society of Appraisers, current member - Business Valuation

National Association of Certified Valuation Analysts, current member

Continental Association of CPAs, Past Chair of Litigation Services Committee  
and Information Technology Committee

Boise Estate Planning Council, current member, Past - President, Vice  
President, Treasurer, Secretary and Program Chairman

**Prior Public Service  
and Community  
Activities:**

Boise Chamber of Commerce

Member of Small Business Recognition Sub-committee

Member of Small Business Education and Advisory Sub-committee

Chair of Small Business Committee

Member of Garden City Chamber Council

Discovery Center of Idaho, Vice President of Board

Kiwanis

Moscow Chamber of Commerce

President, Vice President, Treasurer & Board member

Moscow Executive Association

Moscow Rotary

Lewiston Chamber of Commerce

Lewiston Jaycees

Held various offices & a member of Board of Directors

Prepared and presented accounting seminars for Human Advancement's  
Inc., Minority Contractors Awareness Seminars and the Lewis-Clark  
Homebuilders Association.

Taught night classes in bookkeeping at the Clarkston Branch of Walla Walla  
Community College.

**PRIOR TESTIMONY - DENNIS R. REINSTEIN, CPA/ABV, ASA, CVA**

The following is a list of cases in which I have given recorded testimony in the last four years.

- 1) Jean-Michel Thirion, et al. v. Brenda E. Sangster.  
Hearing on Fees – Boise, Idaho – December 2010
- 2) The City of Meridian v. Petra Incorporated  
Trial – Boise, Idaho – March 2011
- 3) Tim Hopkins v. Advantage Sales and Marketing Holdings, LLC  
Trial – Boise, Idaho – December 2011
- 4) Rodney Shaddox, et al. v. Daryl Kent MacCarter, M.D.  
Deposition – Boise, Idaho – January 2012
- 5) Profits Plus Capital Management, LLC, et al. v. Jeffrey Podesta, et al.  
Trial – Boise, Idaho – February 2012
- 6) Michael Arevalo v. SafeScan Imaging Services, LLC, et al.  
Deposition – Boise, Idaho – April 2012  
Court Hearing on Qualifications – Emmett, Idaho – May 2012  
Trial – Emmett, Idaho – May 2012
- 7) Peggy Cedillo v. Farmers Insurance Company of Idaho  
Deposition – Boise, Idaho – October 2012
- 8) Randy Hoffer and Galyena Hoffer v. Stanley J. Waters, M.D., et al  
Deposition – Boise, Idaho – July 2013
- 9) Elaine Jensen Lemon v. Jerry Kenneth Lemon  
Arbitration – Boise, Idaho – August 2013
- 10) Jeffrey Edward Huber v. Lightforce USA, Incorporated, d.b.a. Nightforce Optics  
Deposition – Boise, Idaho – October 2013  
Trial – Orofino, Idaho – October 2013
- 11) James Crisp v. Idaho Concrete Co.  
Deposition – Boise, Idaho – January 2014
- 12) Zeljko Sabo vs. Fiskars Brand, Inc., (dba) Gerber Legendary Blades  
Deposition – Boise, Idaho – April 2014
- 13) Wanda G. DaPron, et al vs. Joseph M. Verska, M.D., et al  
Deposition – Boise, Idaho – July 2014

**PUBLICATIONS/PRESENTATIONS - DENNIS R. REINSTEIN, CPA/ABV, ASA, CVA**

The following is a list of publications I have authored or co-authored over the last 10 years.

- 1) Business Valuation Basics: How to Use Valuation/Financial Theory to Increase the Value of Your Business – presented to TechHelp, Manufacturers Luncheon on January 28, 2005.
- 2) Tax Planning for Sales of Real Estate – sponsored by Premier Alliance on March 16, 2005.
- 3) Valuation and Credit Analysis: Similarities and Differences – presented to Boise area U.S. Bank business bankers on May 11, 2005.
- 4) The Guideline Publicly Traded Company Method and The Market Value of “invested” Capital: Should Market Value of “Stakeholder” Capital be the Appropriate Reference – Business Valuation Review; Summer, 2006.
- 5) A Hybrid Restricted Stock/Pre-IPO Data Point: Lack of Marketability Discount for ESOP’s. – Business Valuation Review; Summer, 2007.
- 6) Pension Plans and Closely-Held Companies: Valuing Tricky Assets in Divorce – presented to the Idaho State Bar Association on May 9, 2008.
- 7) Considerations in Starting a Dental Practice –
  - a) Presented to Idaho State University Dental School, November 11, 2008
  - b) Presented to Idaho State University Dental School, January 12, 2010
  - c) Presented to Idaho State University Dental School, June 20, 2011
  - d) Presented to Idaho State University Dental School, March 19, 2012
  - e) Presented to Idaho State University Dental School, January 14, 2013
  - f) Presented to Idaho State University Dental School, February 3, 2014
- 8) Co-presenter on damages in Personal Injury litigation to various Treasure Valley area law firms – 2009.
- 9) An Update on Proposed IRS’ Appraiser Penalty Procedures – published in ISCPA Adjusting Entry, April 2010.
- 10) Co-presenter in “Accounting 101 Seminar for Attorneys” – sponsored by the National Business Institute, Boise, Idaho August 12, 2010.
- 11) Co-presenter in “Buy-Sell Agreements: Recipe for Success or Roadmap to Ruin?” –
  - a) Presented to the Idaho State Bar – 2010 Advanced Estate Planning Seminar, September 11, 2010.
  - b) Presented to the Business and Corporate Law Section of the Idaho State Bar, September 14, 2011.
  - c) Presented to the Business Group of Holland & Hart, LLP, September 28, 2011.

**PUBLICATIONS/PRESENTATIONS - DENNIS R. REINSTEIN - continued**

- 12) Co-presenter in "So You Think You Want To Be An Expert Witness?" – sponsored by the Idaho Society of CPA's, Boise, Idaho November 4, 2011.
- 13) Inn of Court Program – participant on Lou Racine Team – presentation on "Overcoming Jury Bias Against Paid Experts & How to Utilize that Bias Against Your Opponent's Experts" – Boise, Idaho April 18, 2012.

**QUALIFICATIONS - DENNIS R. REINSTEIN, CPA/ABV, ASA, CVA**

See curriculum vitae attached.

**COMPENSATION - DENNIS R. REINSTEIN, CPA/ABV, ASA, CVA**

Hourly rate of \$330 plus out-of-pocket costs.

# **EXHIBIT B**

# COLES REINSTEIN

Accounting & Consulting

November 24, 2014

Dennis R. Reinstein, CPA/ABV, ASA, CVA  
S. Jason Coles, MBA, CPA, PFS  
Keith A. Pinkerton, MBA, CFA, ASA  
Karen A. Ginnett, CPA, CFE, MST

Gary L. Cooper, Esq.  
Cooper & Larsen, Chartered  
P.O. Box 4229  
Pocatello, ID 83205-4229

Gerald T. Husch, Esq.  
Moffatt Thomas Barrett Rock & Fields, Chtd.  
P.O. Box 829  
Boise, ID 83701-0829

Re: American Semiconductor, Inc. v. Sage Silicon Solutions, LLC, et al.

Dear Mr. Cooper and Mr. Husch:

This letter is an update or supplement to my Expert Report issued in the above matter dated September 3, 2014. This letter does not replace my original report, but provides additional rebuttal as a result of recently obtaining sufficient information to reconstruct Schedule 8 contained in the Expert Report of Richard Hoffman dated August 4, 2014. The reconstruction of Hoffman's Schedule 8 has led to additional insights for the basis of his calculations of loss alleged by ASI.

The references to various parties and the materials noted as relied upon in my original report remain the same, with the addition of the fact that I attended the deposition of Hoffman conducted on October 30, 2014.

My supplemental analysis is contained in the following comments and related schedules attached herewith.

## **Schedule 1 – Summary**

As detailed in the accompanying Schedules, the alleged losses – to the extent they are applicable – are more appropriately reflected in the amount of approximately \$121,000.

## **Schedule 2 – Analysis of Hoffman Schedule 2**

This Schedule reflects the original calculations completed by Hoffman along with my adjustments under the heading "Hoffman Adjusted."

I have utilized, for this illustration, the direct labor amounts utilized by Hoffman.

- 1) As I noted in my original report, Hoffman reflected payments that are at least in part, if not wholly, incorporated into the direct labor amounts - such as holiday and PTO pay, thus overstating the fringe benefit allocation. When payroll amounts are removed from

the fringe benefit costs that are driven by payroll, the fringe benefit costs would be reduced to a range of 12.89% to 14.87% (depending on the treatment of bonuses) in my analysis vs. the 24.59% used by Hoffman.

- 2) Based on the testimony of Monte Dalrymple and conversations with David Staab and the Sage defendants, ASI did not possess all the tools necessary to undertake the Project. Further, and more importantly, Zilog would have required the use of tools they already possessed and were utilizing in their organization. Therefore, any allocation of cost for tools is duplicative and effectively prices ASI out of the market for the required services.
- 3) I have utilized, for this illustration, Hoffman's allocation for G & A to the pricing function.
- 4) I have utilized, for this illustration, Hoffman's allocation for Profit to the pricing function.
- 5) Incremental costs are understated by the omission of labor and fringe benefits, and as discussed in the Other Comments section of this letter - an incremental component of G & A costs.
  - It has not been established with reasonable certainty that excess capacity was available, at the proper skill levels, to conduct the required services at the time the initial phases of the Project were undertaken. The adjustments noted in my illustration are consistent with those reflected in the Hoffman's analysis of the later phases of the Project.

#### **Schedule 3 – Analysis of Hoffman Schedule 3**

This Schedule reflects the original calculations completed by Hoffman along with my adjustments under the heading "Hoffman Adjusted."

My comments are consistent with those noted above in the discussion of Schedule 2.

#### **Schedule 4 – Analysis of Hoffman Schedule 4**

This Schedule reflects the original calculations completed by Hoffman along with my adjustments under the heading "Hoffman Adjusted."

My comments are consistent with those noted above in the discussion of Schedule 3, except that Hoffman's analysis incorporated incremental costs for labor and fringe benefits which I also utilized, for this illustration.

#### **Schedule 5 – Analysis of Hoffman Schedule 5**

This Schedule reflects the original calculations completed by Hoffman along with my adjustments under the heading "Hoffman Adjusted."

My comments are consistent with those noted above in the discussion of Schedule 4.



Gary L. Cooper, Esq.  
Gerald T. Husch, Esq.  
November 24, 2014  
Page 3

**Other Comments**

- 1) Hoffman does not make any allocation of G & A costs against the alleged lost revenue to calculate alleged lost profits as he asserts that there are no incremental G & A costs related to the Project.
  - It is unrealistic to presume that an activity comprising 25% to 30% of annual revenues of ASI would have no impact on incremental G & A costs.
  - If it is in fact true that there are no incremental costs, then this causes one to question why these non-existent G & A costs at 26.48% are appropriate to include in Hoffman's buildup of alleged lost revenue.
  - Because financial data provided is incomplete, a proper analysis of incremental costs cannot be quantified.
- 2) The alleged profits, as noted in my earlier report, are inconsistent with historical profit levels realized by ASI. Further, the alleged profits are not consistent with the pricing models utilized by Hoffman which call for a profit target of 17% on costs.

Please contact me with any questions or clarification required.

Sincerely,

COLES REINSTEIN, PLLC



Dennis R. Reinstein, CPA/ABV, ASA, CVA

Enclosures

**Schedule 1 - Summary**

**Lone Peak Valuation Group**

**American Semiconductor v. Sage Silicon Solutions**

Category	Concluded by Hoffman				Hoffman Adjusted		
	Source Schedule	Lost Revenue	Lost Profit	Profit %	Lost Revenue	Lost Profit	Profit %
1 Services Performed by Sage (Paid by Zilog)	Schedule 2	352,047	352,047	100%	111,158	36,040	32%
2 Services Performed by Sage (Not Paid by Zilog)	Schedule 3	90,259	90,259	100%	27,987	9,074	32%
3 Additional Services Ordered by Zilog	Schedule 4	187,516	148,122	79%	58,295	18,900	32%
4 Services Needed to Bring Project to "Tape-Out"	Schedule 5	552,666	434,660	79%	174,621	56,616	32%
Total		1,182,488	1,025,087	87%	372,061	120,630	32%

**Lone Peak Valuation Group**  
**American Semiconductor v. Sage Silicon Solutions**

**Services Performed by Sage (Paid by Zilog)**

Schedule 2

Hoffman Adjusted

	<u>Base Hours</u>	<u>Rate</u>	<u>Amount</u>		
REVENUES					
Revenue to Cover Direct Labor Costs	Schedule 6	<6>			
Design & Verification Engineering	1,252.75	39.50	49,484		49,484
Circuit Design Engineering	248.00	39.50	9,796		9,796
Layout Engineering	36.90	27.45	1,013		1,013
Subtotal	1,537.65		60,293		60,293
<1> Fringe Benefits		24.59%	14,826	24.59%	14,826
Total Labor Costs			75,118		75,118
Other Revenue Allocations					
<2> Phono-D Design Tools Allocation	204,870		162,788		0
Subtotal			237,906		75,118
<3> General & Administrative Allocation		26.48%	62,989	26.48%	19,889
Subtotal			300,895		95,007
<4> Profit Allocation		17.00%	51,152	17.00%	16,151
<b>Total Revenue</b>			<b>352,047</b>		<b>111,158</b>
INCREMENTAL COSTS					
<5> Total Direct Labor					(60,293)
<5> Total Fringe Benefits					(14,826)
G & A Expense					
<b>Total Incremental Costs</b>			<b>0</b>		<b>(75,118)</b>
PROFITS					
<b>Total ASI lost Profits</b>			<b>352,047</b>		<b>36,040</b>

**Lone Peak Valuation Group**  
**American Semiconductor v. Sage Silicon Solutions**

**Services Performed by Sage (Not Paid by Zilog)**

Schedule 3

Hoffman Adjusted

	Base Hours	Rate	Amount	
REVENUES				
Revenue to Cover Direct Labor Costs	Schedule 6	<6>		
Design & Verification Engineering	294.25	39.50	11,623	11,623
Circuit Design Engineering	60.00	39.50	2,370	2,370
Layout Engineering	43.25	27.45	1,187	1,187
Subtotal	397.50		15,180	15,180
<1> Fringe Benefits		24.59%	3,733	24.59% 3,733
Total Labor Costs			18,913	18,913
Other Revenue Allocations				
<2> Phono-D Design Tools Allocation	204,870		42,082	0
Subtotal			60,995	18,913
<3> General & Administrative Allocation		26.48%	16,149	26.48% 5,007
Subtotal			77,145	23,920
<4> Profit Allocation		17.00%	13,115	17.00% 4,066
<b>Total Revenue</b>			<b>90,259</b>	<b>27,987</b>
INCREMENTAL COSTS				
<5> Total Direct Labor				(15,180)
<5> Total Fringe Benefits				(3,733)
G & A Expense				
<b>Total Incremental Costs</b>			<b>0</b>	<b>(18,913)</b>
PROFITS				
<b>Total ASI lost Profits</b>			<b>90,259</b>	<b>9,074</b>

**Lone Peak Valuation Group**  
**American Semiconductor v. Sage Silicon Solutions**

**Additional Services Ordered by Zilog****Schedule 4****Hoffman Adjusted**

	<b>Base Hours</b>	<b>Rate</b>	<b>Amount</b>		
<b>REVENUES</b>					
Revenue to Cover Direct Labor Costs	Schedule 6	<6>			
Design & Verification Engineering	733.00	39.50	28,954		28,954
Circuit Design Engineering	12.00	39.50	474		474
Layout Engineering	79.85	27.45	2,192		2,192
Subtotal	824.85		31,619		31,619
<1> Fringe Benefits		24.59%	7,775	24.59%	7,775
Total Labor Costs			39,395		39,395
Other Revenue Allocations					
<2> Phono-D Design Tools Allocation	204,870		87,325		0
Subtotal			126,720		39,395
<3> General & Administrative Allocation		26.48%	33,551	26.48%	10,430
Subtotal			160,270		49,825
<4> Profit Allocation		17.00%	27,246	17.00%	8,470
<b>Total Revenue</b>			187,516		58,295
<b>INCREMENTAL COSTS</b>					
<5> Total Direct Labor			(31,619)		(31,619)
<5> Total Fringe Benefits			(7,775)		(7,775)
G & A Expense					
<b>Total Incremental Costs</b>			(39,395)		(39,395)
<b>PROFITS</b>					
<b>Total ASI lost Profits</b>			148,122		18,900

**Lone Peak Valuation Group**  
**American Semiconductor v. Sage Silicon Solutions**

**Services Needed to Bring Project to "Tape-Out"**

Schedule 5

Hoffman Adjusted

	Base Hours	Rate	Amount		
REVENUES					
Revenue to Cover Direct Labor Costs	Schedule 6	<6>			
Design & Verification Engineering	1,861.00	39.50	73,510		73,510
Circuit Design Engineering	502.00	39.50	19,829		19,829
Layout Engineering	50.15	27.45	1,377		1,377
Subtotal	2,413.15		94,715		94,715
<1> Fringe Benefits		24.59%	23,290	24.59%	23,290
Total Labor Costs			118,006		118,006
Other Revenue Allocations					
<2> Phono-D Design Tools Allocation	204,870		255,475		0
Subtotal			373,480		118,006
<3> General & Administrative Allocation		26.48%	98,883	26.48%	31,243
Subtotal			472,364		149,249
<4> Profit Allocation		17.00%	80,302	17.00%	25,372
<b>Total Revenue</b>			<b>552,666</b>		<b>174,621</b>
INCREMENTAL COSTS					
<5> Total Direct Labor			(94,715)		(94,715)
<5> Total Fringe Benefits			(23,290)		(23,290)
G & A Expense					
<b>Total Incremental Costs</b>			<b>(118,006)</b>		<b>(118,006)</b>
PROFITS					
<b>Total ASI lost Profits</b>			<b>434,660</b>		<b>56,616</b>

**Lone Peak Valuation Group**  
**American Semiconductor v. Sage Silicon Solutions**

	<u>2010</u>	<u>Reclass</u>		<u>Commercial OH</u>	
Revenue	3,940,766				
Cost of Goods Sold					
Direct Labor	793,283			793,283	
Direct Labor P/R Costs	65,281	195,068	(65,281)	195,068	
Direct Material	113,625			113,625	
Other Direct Costs	1,695,493			1,695,493	
Freight	9,517			9,517	
Total	<u>2,677,199</u>	<u>195,068</u>	<u>(65,281)</u>	<u>2,806,987</u>	Cost Input
Expenses					
Indirect Labor	377,954			377,954	
Indirect Labor P/R Costs	35,908	92,939	(222,733)	(93,886)	
Fringe Benefits	186,825			186,825	
Unallowed Costs	127,183			127,183	
Other	145,109			145,109	
Total	<u>872,978</u>	<u>92,939</u>	<u>(222,733)</u>	<u>743,184</u>	26.48%
Total Costs	3,550,177	288,007	(288,013)	3,550,171	
Net Income	390,588				

**Lone Peak Valuation Group****American Semiconductor v. Sage Silicon Solutions**

	<u>2010</u>	<u>Used</u>	<u>Labor</u>	<u>Fringe</u>
Revenue	3,940,766			
COGS				
Direct Labor	793,283	793,283	793,283	
Direct Labor P/R Costs	65,281	65,281		65,281
Direct Material	113,625			
Other Direct Costs	1,695,493			
Freight	9,517			
Total	<u>2,677,199</u>	<u>858,564</u>		
Expenses				
Indirect Labor	377,954	377,954	377,954	
Indirect Labor P/R Costs	35,908	35,908		35,908
Fringe Benefits	186,825	186,825		186,825
Unallowed Costs	127,183			
Other	145,109			
Total	<u>872,978</u>	<u>600,687</u>		
Total Costs	<u>3,550,177</u>	<u>1,459,250</u>	<u>1,171,237</u>	<u>288,013</u>
Net Income	<u>390,588</u>			
			<u>Reclass</u>	<u>Fringe Calculation</u>
Bonus Expense		25,600		(25,600) 0
PTO Expense Salaries		61,371		(61,371) 0
Holiday Expense Salaries		34,409		(34,409) 0
Insurance		60,750		60,750
P/R Tax expense		105,883		105,883
P/R Costs & Fringe		288,013	0	(121,380) 166,633
Labor		1,171,237	121,380	1,292,617
Total		<u>1,459,250</u>	<u>121,380</u>	<u>(121,380) 1,459,250</u>
Calculated %		24.59%		12.89%



**Lone Peak Valuation Group**  
**American Semiconductor v. Sage Silicon Solutions**

<b>Services Performed by Sage (Paid by Zilog)</b>						<b>Hoffman Adjusted</b>				
	Sch 2	Sch 3	Sch 4	Sch 5	<u>Total</u>	Sch 2	Sch 3	Sch 4	Sch 5	<u>Total</u>
<b>REVENUES</b>										
Revenue to Cover Direct Labor Costs										
Design & Verification Engineering	49,484	11,623	28,954	73,510	163,570	49,484	11,623	28,954	73,510	163,570
Circuit Design Engineering	9,796	2,370	474	19,829	32,469	9,796	2,370	474	19,829	32,469
Layout Engineering	1,013	1,187	2,192	1,377	5,769	1,013	1,187	2,192	1,377	5,769
Subtotal	60,293	15,180	31,619	94,715	201,807	60,293	15,180	31,619	94,715	201,807
<1> Fringe Benefits	14,826	3,733	7,775	23,290	49,624	14,826	3,733	7,775	23,290	49,624
Total Labor Costs	75,118	18,913	39,395	118,006	251,431	75,118	18,913	39,395	118,006	251,431
Other Revenue Allocations										
<2> Phono-D Design Tools Allocation	162,788	42,082	87,325	255,475	547,670	0	0	0	0	0
Subtotal	237,906	60,995	126,720	373,480	799,101	75,118	18,913	39,395	118,006	251,431
<3> General & Administrative Allocation	62,989	16,149	33,551	98,883	211,572	19,889	5,007	10,430	31,243	66,570
Subtotal	300,895	77,145	160,270	472,364	1,010,673	95,007	23,920	49,825	149,249	318,001
<4> Profit Allocation	51,152	13,115	27,246	80,302	171,814	16,151	4,066	8,470	25,372	54,060
<b>Total Revenue</b>	<b>352,047</b>	<b>90,259</b>	<b>187,516</b>	<b>552,666</b>	<b>1,182,488</b>	<b>111,158</b>	<b>27,987</b>	<b>58,295</b>	<b>174,621</b>	<b>372,061</b>
<b>INCREMENTAL COSTS</b>										
<5> Total Direct Labor			(31,619)	(94,715)	(126,335)	(60,293)	(15,180)	(31,619)	(94,715)	(201,807)
<5> Total Fringe Benefits			(7,775)	(23,290)	(31,066)	(14,826)	(3,733)	(7,775)	(23,290)	(49,624)
G & A Expense										
<b>Total Incremental Costs</b>	<b>0</b>	<b>0</b>	<b>(39,395)</b>	<b>(118,006)</b>	<b>(157,400)</b>	<b>(75,118)</b>	<b>(18,913)</b>	<b>(39,395)</b>	<b>(118,006)</b>	<b>(251,431)</b>
<b>PROFITS</b>										
<b>Total ASI lost Profits</b>	<b>352,047</b>	<b>90,259</b>	<b>148,122</b>	<b>434,660</b>	<b>1,025,087</b>	<b>36,040</b>	<b>9,074</b>	<b>18,900</b>	<b>56,616</b>	<b>120,630</b>

**ORIGINAL**NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. **5****DEC 04 2014**CHRISTOPHER D. RICH, Clerk  
By PATRICK McLAUGHLIN  
DEPUTY

*Merike  
garet  
8/15  
12-5-14*

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*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**JOINDER WITH ZILOG, INC.'S  
OPPOSITION TO ASI'S MOTION IN  
LIMINE NO. 13**

RELATED COUNTER ACTIONS

JOINDER WITH ZILOG, INC.'S OPPOSITION TO ASI'S MOTION IN LIMINE NO. 13 - PAGE 1

001435

Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany (collectively the "Sage Defendants") hereby join Defendant Zilog, Inc.'s Opposition to Plaintiff's Motion in Limine No. 13 to Preclude Jointly Retained Defense Expert Dennis Reinstein's [Allegedly] Untimely Disclosed Expert Opinions.

American Semiconductor, Inc. ("ASI") argues that Dennis Reinstein's supplemental report was untimely filed and should be excluded. As stated in Zilog's opposition, Reinstein was retained by the Defendant's to evaluate the damages report prepared by Hoffman, ASI's expert. When Hoffman's report was produced, the data on which he relied was included into various schedules attached to the report. Schedule 8 to his report is an Excel spreadsheet containing data and calculation results relied on by Hoffman. Defendants separately requested that ASI produce Schedule 8 in its native format. However, Schedule 8 was never produced in its native format. Without having Schedule 8 in the native format or having a legend that explained the calculations in Schedule 8, it was not possible for Reinstein to evaluate Hoffman's damages calculations. Reinstein explained this fact to ASI's counsel during Reinstein's deposition and stated that there was ongoing analysis of Schedule 8. Because he did not have Schedule 8 in its native format, Reinstein could not proceed with his analysis of Schedule 8 until he was able to review the transcript of Hoffman's deposition that contained an explanation of Hoffman's calculations in Schedule 8.

The opinions contained in Reinstein's supplemental report are opinions regarding the method Hoffman employed to calculate damages and demonstrate that Hoffman's calculations are flawed and grossly exaggerated. The supplemental report was filed in accordance with the rules of discovery that require supplementation of expert opinions. The only violation of the discovery rules is that committed by ASI in repeatedly failing to provide a copy of Schedule 8 in its native format when

requested. Therefore, the Sage Defendants join Zilog, Inc.'s Opposition to Plaintiff's Motion in Limine No. 13 to Preclude Jointly Retained Defense Expert Dennis Reinstein's [Allegedly] Untimely Disclosed Expert Opinions.

DATED this 4 day of December, 2014.

COOPER & LARSEN

  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4 day of December, 2014, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702

☒ U.S. mail  
☐ Express mail  
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☐ Electronic delivery: [izarian@parsonsbehle.com](mailto:izarian@parsonsbehle.com)  
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Daniel W. Bower  
Stewart Taylor & Morris, PLLC  
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Gerald T. Husch  
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☐ Express mail  
☐ Hand delivery  
☐ Electronic delivery [gth@moffatt.com](mailto:gth@moffatt.com)  
☒ Fax: 208-385-5384

  
GARY L. COOPER

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 442

DEC 05 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
Sarah H. Arnett, ISB No. 6545  
PARSONS BEHLE & LATIMER  
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KLuvai@parsonsbehle.com  
SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S NOTICE OF ELECTION OF  
REMEDIES**

ORIGINAL

WHEREAS, on July 2, 2013, plaintiff American Semiconductor, Inc. ("ASI") filed its operative Second Amended Complaint and Demand for Jury Trial ("Second Amended Complaint"); and,

WHEREAS, in the Second Amended Complaint, ASI asserted a number of claims against defendants David Roberts, Gyle Yearsley and William Tiffany (collectively, the "Individual Defendants"), including, without limitation, claims for breach of contract (first cause of action) and unjust enrichment (eighth cause of action); and,

WHEREAS, ASI asserted the foregoing claims for breach of contract and unjust enrichment in good faith and in light of the facts available to it at the time of its pleading and through discovery; and,

WHEREAS, Rule 8 of the Idaho Rules of Civil Procedure expressly provides that "[a] party may . . . state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both;" and,

WHEREAS, on or about August 29, 2014, the Individual Defendants filed a motion for summary judgment in which they sought, among other relief, to have ASI's unjust enrichment claim against them dismissed in light of ASI's assertion of a breach of contract claim; and,

WHEREAS, ASI did not assert a breach of contract claim against the other defendants, namely, Sage Silicon Solutions, LLC and Zilog, Inc. and, thus, the issue of election of remedies, as framed in the Individual Defendants' motion, did not arise as to these other defendants; and,

WHEREAS, on September 26, 2014, the Court denied the Individual Defendants' motion for summary judgment as to the unjust enrichment claim on the grounds that ASI was entitled, under Rule 8, to plead alternative theories provided it elected a remedy prior to the time of trial; and,

WHEREAS, on or around October 24, 2014, the Individual Defendants filed a motion for reconsideration of the Court's denial of their motion for summary judgment with regard to ASI's unjust enrichment claim; and,

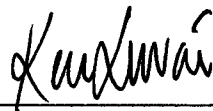
WHEREAS, on November 14, 2014, the Court held a hearing on pretrial motions filed by the various parties and considered the Individual Defendants' motion for reconsideration; and,

WHEREAS, after considering the Individual Defendants' motion for reconsideration, the Court directed that, on or before December 5, 2014, ASI formally elect between its breach of contract and its unjust enrichment claim as to the Individual Defendants.

NOW, THEREFORE, by and through its undersigned counsel of record, ASI hereby formally elects, as between the breach of contract and the unjust enrichment claims asserted against the Individual Defendants, to proceed to trial on its breach of contract claim. ASI makes this election in response to the Court's directive and without prejudice to any of its other remaining claims against the Individual Defendants and/or the other defendants.

DATED this 5th day of December, 2014.

PARSONS BEHLE & LATIMER

By  \_\_\_\_\_

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of December, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

<p>Gary L. Cooper COOPER &amp; LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com</p>
<p>Daniel W. Bower Chad E. Bernards STEWART TAYLOR &amp; MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: dbower@stm-law.com chad@stm-law.com suzie@stm-law.com</p>
<p>Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK &amp; FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i></p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com</p>

  
\_\_\_\_\_  
Kennedy K. Luvai



NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:42

DEC 05 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
Sarah H. Arnett, ISB No. 6545  
PARSONS BEHLE & LATIMER  
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Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com  
SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**FOURTH SUPPLEMENTAL  
DECLARATION OF KENNEDY K.  
LUVAI IN SUPPORT OF  
PLAINTIFF'S MOTIONS *IN LIMINE***

ORIGINAL

001442

I, Kennedy K. Luvai, declare as follows:

1. I am duly licensed to practice law in Idaho and before this Court, and I am over eighteen years of age. I am an attorney with the law firm of Parsons Behle & Latimer, PLC ("Parsons Behle"), and one of the attorneys of record for plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), in the above-referenced action. I make this declaration based upon my own personal knowledge and, if called upon, could and would testify as to the truth of the statements contained herein.

2. I make this declaration in support of the Reply in Further Support of Plaintiff's Motion *in Limine* No. 12 Re: Zilog's Improperly Withheld Meeting Minutes (filed concurrently herewith).

3. At the close of business yesterday, December 4, 2014, Zilog produced what appear to be the meeting minutes requested as part of ASI's document request no. 42. Given the untimely nature of this production, neither counsel for ASI nor its technical expert, Stephen Holland, has had an opportunity to review Zilog's production. Attached hereto as **Exhibit A** is a true and correct copy of Defendant Zilog, Inc.'s Supplemental Responses to Plaintiff's Seventh Set of Requests for Production dated December 4, 2014.

I declare under penalty of perjury under the laws of Idaho that the foregoing is true and correct. Executed this 5th day of December, 2014, at Boise, Idaho.



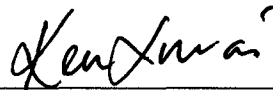
---

Kennedy K. Luvai

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5th day of December, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower Chad E. Bernards STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Email: dbower@stm-law.com chad@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile Email: srt@moffatt.com gth@moffatt.com

  
\_\_\_\_\_  
Kennedy K. Luvai

## **EXHIBIT A**

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
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25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DEFENDANT ZILOG, INC.'S  
SUPPLEMENTAL RESPONSES TO  
PLAINTIFF'S SEVENTH SET OF  
REQUESTS FOR PRODUCTION**

COMES NOW Defendant Zilog, Inc., by and through undersigned counsel of record, and hereby supplements its previous responses to Plaintiff's Seventh Set of Requests for Production as follows:

#### **PRELIMINARY STATEMENT**

The responses provided herein are based upon reasonable and good faith efforts conducted in the time available since the Document Request was served. As of the time of this response, ASI has not produced all requested discoverable records nor has Zilog had an opportunity to take all of the depositions of plaintiff, its witnesses, or third parties who may have knowledge of critical facts or who may possess additional documents.

As a consequence, Zilog's responses are based upon reasonable, good faith and diligent efforts and information now known to Zilog and which Zilog believes to be relevant to the issues raised in this action. Discovery is proceeding, however, and Zilog may subsequently acquire additional information bearing upon the document requests.

Without in any way obligating itself to do so, Zilog reserves the right (a) to make subsequent revisions, supplementation or amendment to this response based upon any information, evidence, documents, facts and things which hereafter may be discovered, or the relevance of which may hereafter be discovered and (b) to produce, introduce or rely upon additional or subsequently acquired or discovered writings, interviews, and information at trial or in any pretrial proceedings held herein.

Zilog submits these responses solely for the purpose of, and in relation to, this action. Each response herein is made subject to all appropriate objections (including, but not limited to, objections concerning competency, relevance, materiality, propriety and admissibility) that would require the exclusion of any information, document or thing at the time

of trial. All such objections, and the grounds for such objections, are reserved and may be interposed at the time of trial or any other proceeding in this action.

Zilog incorporates this Preliminary Statement into each response herein, as if fully set forth therein.

### **COMMON OBJECTIONS**

A. Zilog objects to the Document Requests (inclusive of any preceding definitions) to the extent that they purport to impose obligations upon Zilog that are contrary to or inconsistent with applicable provisions of the Idaho Rules of Civil Procedure.

B. Zilog objects to the Document Requests to the extent that they seek premature pretrial or expert disclosures contrary to applicable rules, order(s) of the Court, and/or stipulation(s) of the parties to this action.

C. Zilog objects to the Document Requests to the extent that they could be construed as requesting (a) disclosure of information prepared by or at the direction of its attorneys, (b) disclosure of information prepared by or for Zilog or its representatives in contemplation of litigation or trial, (c) disclosure, release, or review of confidential communications by and between Zilog and its attorneys, or (d) information otherwise covered by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, rule or immunity.

D. Zilog objects to the Document Requests to the extent that they seek confidential financial and/or sales data, the disclosure of which could negatively impact Zilog's competitive or business position or result in a breach by Zilog of an obligation to a third-party to maintain such information as confidential. To the extent that such information is properly discoverable, Zilog shall produce the same only under the terms of the Protective Order in place

in this case and under the implied and express understanding that Zilog shall treat that information appropriately pursuant to the Protective Order.

E. Zilog objects to the Document Requests to the extent that they seek information not reasonably expected to yield information relevant to the allegations in the Second Amended Complaint or any Counterclaim, to the proposed relief or to the defenses of either side.

F. Zilog objects to the Document Requests to the extent that they are overbroad, unduly burdensome, or require unreasonable efforts or expense on behalf of Zilog in order to comply.

G. Zilog objects to the Document Requests to the extent that they seek records not in Zilog's possession, custody or control.

H. Zilog objects to the Document Requests to the extent that they seek to impose an obligation on Zilog to provide information for or on behalf of any person or entity other than Zilog.

I. Zilog objects to the Document Requests as vague and ambiguous to the extent that they do not adequately define important, primary, key or controlling terms as used therein.

J. Zilog objects to the Document Requests to the extent that they seek information obtainable in a more convenient, less burdensome, and less expensive method than through requests for production of documents.

K. Zilog objects to the Document Requests to the extent that the burden of obtaining responsive documents is substantially the same, under the circumstances, for the requesting parties as it is for Zilog.



## DOCUMENT REQUESTS

**REQUEST FOR PRODUCTION NO. 42:** All DOCUMENTS that evidence, reflect, or constitute minutes from development team meetings in connection with the 6480/6482 project from October 11, 2011 through tapeout.

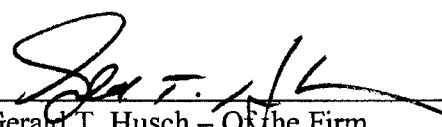
**RESPONSE NO. 42:** Zilog incorporates any and all of the foregoing General Objections to the extent they are applicable to this discovery request. Zilog objects to this discovery request on the grounds that it seeks discovery of information that is not relevant to the subject matter involved in the pending action, is not reasonably calculated to lead to the discovery of admissible evidence and is therefore outside the scope of discovery as set forth in Idaho Rule of Civil Procedure 26(b)(1).

**SUPPLEMENTAL RESPONSE NO. 42:** Without waiving its prior objections, Zilog produces herewith documents and things Bates numbered as Z036679 through Z036792.

DATED this 4th day of December, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By

  
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December, 2014, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG, INC.'S SUPPLEMENTAL RESPONSES TO PLAINTIFF'S SEVENTH SET OF REQUESTS FOR PRODUCTION** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

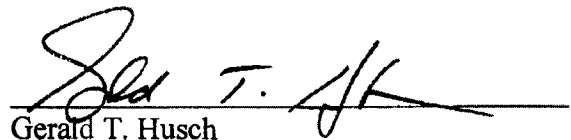
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
12550 W. Explorer Dr., Suite 100  
Boise, ID 83713  
Facsimile (208) 345-4461  
*Attorneys for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
800 W. Main St., Suite 1300  
Boise, ID 83702  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
Gerald T. Husch

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. *500*

**DEC 12 2014**

CHRISTOPHER D. RICH, Clerk  
By KATHUNA THIESSEN

Gary L. Cooper - Idaho State Bar #1814  
COOPER & LARSEN, CHARTERED  
151 North Third Avenue, Second Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
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*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
Gyle Yearsley and William Tiffany*

Russell G. Metcalf - Idaho State Bar #7024  
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Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854  
Email: [rmetcalf@cablone.net](mailto:rmetcalf@cablone.net)

*Counsel for Counterclaimants*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, RUSSELL LLOYD, )  
WILLIAM TIFFANY, EVELYN PERRYMAN, )  
and Defendants DOES I - X, )  
 )  
Defendants. )  
\_\_\_\_\_ )

CASE NO. CV-OC-1123344

**NOTICE OF SERVICE**

SAGE SILICON SOLUTIONS, LLC, an )  
 Idaho limited liability company; DAVID )  
 ROBERTS, GYLE YEARSLEY, RUSSELL )  
 LLOYD, WILLIAM TIFFANY, EVELYN )  
 PERRYMAN, individuals, )  
 )  
 Counterclaimants, )  
 )  
 vs. )  
 )  
 AMERICAN SEMICONDUCTOR, INC., )  
 an Idaho Corporation, )  
 )  
 Counterdefendant. )

---

COME NOW Defendants, by and through counsel of record, pursuant to Rule 68 of the Idaho Rules of Civil Procedure, and hereby give notice to the Court that *Sage Defendants' Offer of Judgment* was served upon counsel, together with a copy of this *Notice of Service*, on the 12<sup>th</sup> day of December, 2014, at the following address:

John N. Zarian  
 Kennedy Luvai  
 Parsons Behle & Latimer  
 960 Broadway Avenue, Suite 250  
 Boise, ID 83706

☒ U.S. mail  
☐ Express mail  
☐ Electronic: [jzarian@parsonsbehle.com](mailto:jzarian@parsonsbehle.com)  
[kluvai@parsonsbehle.com](mailto:kluvai@parsonsbehle.com)  
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Daniel W. Bower  
 Stewart Taylor & Morris, PLLC  
 12550 W Explorer Drive, Suite 100  
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☒ Fax: 208-385-5384

  
 GARY L. COOPER

DEC 22 2014

CHRISTOPHER D. RICH, Clerk  
By SANTIAGO BARRIOS  
DEPUTY

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
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Telephone (208) 345-2000  
Facsimile (208) 385-5384  
srt@moffatt.com  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DEFENDANT ZILOG'S REQUESTED  
JURY INSTRUCTIONS**

COME NOW, Defendant Zilog, Inc. ("Zilog") and, pursuant to Rule 51(a) of the Idaho Rules of Civil Procedure, hereby requests the Court to instruct the jury with the attached jury instructions.

Zilog hereby request that the Court give the following *standard* Idaho Civil Jury Instructions (IDJI):

- IDJI 1.00 – Introductory instruction to jury
- IDJI 1.01 – Deliberation procedures
- IDJI 1.03.1 – Admonition to jury – short form
- IDJI 1.04 – Insurance cautionary
- IDJI 1.05 – Statement of claims not evidence
- IDJI 1.09 – Quotient verdicts
- IDJI 1.11 – Communications with court
- IDJI 1.13 – Concluding remarks
- IDJI 1.15.2 – Completion of verdict form on special interrogatories
- IDJI 1.17 – Post verdict jury instruction
- IDJI 1.20.1 – Burden of proof – preponderance of evidence
- IDJI 1.22 – Deposition testimony
- IDJI 1.24.2 – Circumstantial evidence with definition
- IDJI 1.28 – Evidence admitted for limited purpose
- IDJI 2.30.1 – Proximate cause – “but for” test
- IDJI 9.00 – Cautionary instruction on damages

Additionally, Zilog hereby requests that the Court give the attached *modified* IDJI instructions:

- Defendant Zilog’s Proposed JI 1 – IDJI 1.02 – Corporate parties
- Defendant Zilog’s Proposed JI 2 – IDJI 1.03 – Admonition to jury
- Defendant Zilog’s Proposed JI 3 – IDJI 4.70 – Tortious interference with contract  
- issues

Additionally, Zilog hereby requests that the Court give the attached *case specific* jury instructions:

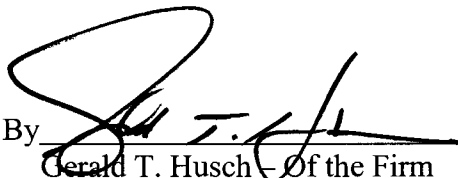
- Defendant Zilog’s Proposed JI 4 – Statement of claims

Defendant Zilog's Proposed JI 5 – Tortious interference with prospective  
economic advantage - issues  
Defendant Zilog's Proposed JI 6 – Interference must be improper  
Defendant Zilog's Proposed JI 7 – Imputation of knowledge to corporation  
Defendant Zilog's Proposed JI 8 – Compensatory damages  
Defendant Zilog's Proposed JI 9 – Net profits  
Defendant Zilog's Proposed JI 10 – Prospective economic expectancy  
Defendant Zilog's Proposed JI 11 – Intent  
Defendant Zilog's Proposed JI 12 – Damages cannot be speculative  
Defendant Zilog's Proposed JI 13 – Permissible damages  
Defendant Zilog's Proposed JI 14 – Factors re: wrongfulness

Zilog reserves the right to withdraw any of these instructions, the right to revise or supplement them to conform to proof presented at the time of trial, and the right to submit a special verdict form at a later time.

DATED this 22 day of December, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of December, 2014, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG'S REQUESTED JURY INSTRUCTIONS** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

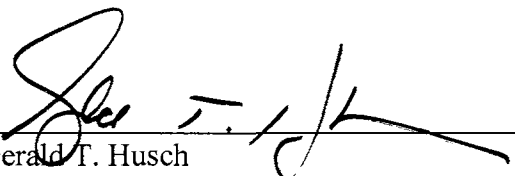
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Daniel W. Bower  
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Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
Gerald T. Husch



**DEFENDANT'S PROPOSED**

**INSTRUCTION NO. 1**

The corporations involved in this case are entitled to the same fair and unprejudiced treatment that an individual would be under like circumstances. You should decide this case with the same impartiality that you would use in deciding a case between individuals.

IDJI2d 1.02. (modified)

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

## DEFENDANT'S PROPOSED

### INSTRUCTION NO. 2

There are certain things you must not do during this trial:

1. You must not associate in any way with the parties, any of the attorneys or their employees, or any of the witnesses.
2. You must not discuss the case with anyone, or permit anyone to discuss the case with you. If anyone attempts to discuss the case with you, or to influence your decision in the case, you must report it to me promptly.
3. You must not discuss the case with other jurors until you retire to the jury room to deliberate at the close of the entire case.
4. You must not make up your mind until you have heard all of the testimony and have received my instructions as to the law that applies to the case.
5. You must not contact anyone in an attempt to discuss or gain a greater understanding of the case.
6. You must not go to the place where any alleged event occurred.
7. Do not consult any books, encyclopedias, internet sites or any other source of information during the course of the trial. You must base your decision in this case only on the evidence admitted during the trial without being influenced by any outside source of information.

IDJI2d 1.03 (modified)

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

## DEFENDANT'S PROPOSED

### INSTRUCTION NO. 3

With respect to the plaintiff's claim against a defendant for tortious interference with a contract, the plaintiff has the burden of proving each of the following propositions:

- (1) The plaintiff was a party to an existing contract;
- (2) The defendant knew of the contract;
- (3) The defendant intentionally interfered with the contract, causing a breach;
- (4) The plaintiff was damaged as a proximate result of the defendant's interference;

and

- (5) The nature and extent of damage, and the amount thereof.
- (6) If you find from your consideration of all the evidence that any of the propositions

in this instruction has not been proved, your verdict should be for the defendant.

IDJI2d 4.70 (modified)

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**DEFENDANT'S PROPOSED**

**INSTRUCTION NO. 4**

Plaintiff claims that Defendant Zilog knowingly and intentionally interfered with Plaintiff's Employee Confidentiality Agreements with Defendants David Roberts, Gyle Yearsley and William Tiffany, causing breaches of those agreements, and that Plaintiff was damaged as a proximate result of that alleged interference.

Defendant Zilog denies that it knowingly or intentionally interfered with Plaintiff's Employee Confidentiality Agreements, denies that it caused a breach of any of those agreements, and denies that it caused any damages to Plaintiff.

Plaintiff also claims that Defendant Zilog knowingly and intentionally interfered with Plaintiff's prospective economic expectancy by depriving Plaintiff of the opportunity to earn income from the design services of Defendants David Roberts, Gyle Yearsley and William Tiffany.

Defendant Zilog denies that Plaintiff had a prospective economic expectancy, denies that Zilog knowingly or intentionally interfered with any prospective economic expectancy, and denies that Zilog caused any damages to Plaintiff.

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**DEFENDANT'S PROPOSED**

**INSTRUCTION NO. 5**

With respect to the plaintiff's claim of tortious interference with prospective economic advantage against a defendant, the plaintiff has the burden of proving each of the following propositions:

- (1) The existence of a valid economic expectancy,
- (2) Knowledge of the expectancy on the part of the defendant,
- (3) The defendant intentionally interfered with the expectancy, causing a termination of the expectancy,
- (4) The interference was wrongful by some measure beyond the fact of the interference itself,
- (5) The plaintiff was damaged as a proximate result of the defendant's interference, and
- (6) The nature and extent of damage, and the amount thereof.

If you find from your consideration of all the evidence that any of these elements has not been proved, your verdict should be for the defendant.

*Caldwell v. City of Boise*, 146 Idaho 127, 138, 191 P.3d 205, 216 (2008).

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**DEFENDANT'S PROPOSED**

**INSTRUCTION NO. 6**

In order to find that any interference with the plaintiff's prospective economic advantage was wrongful, the plaintiff must prove that either: (1) Zilog had an improper motive to harm the plaintiff; or (2) Zilog used means to cause injury to the prospective advantage and those means were wrongful by reason of a statute, regulation, recognized common law rule, or an established standard of a trade or profession.

The mere pursuit of Zilog's own business purposes is not sufficient to support an inference of an improper motive to harm the plaintiff.

*Syringa Networks v. Idaho Dep't of Admin.*, 155 Idaho 55, 305 P.3d 499 (2013).

*Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 178, 923 P.2d 416, 423 (1996).

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

## DEFENDANT'S PROPOSED

### INSTRUCTION NO. 7

An employee's knowledge of information is imputed to his employer if the information concerns a matter within the scope of the employee's authority and was acquired in the scope of the employee's duties to the employer. For an employee's knowledge of information to be imputed to his employer, the employee must have not only a duty in relation to the subject matter of the information, but also a duty to speak to his employer about the specific information. Whether a corporate employer is deemed to have knowledge of information acquired by an employee is a question of fact which takes into account the nature of the information, the circumstances in which the employee received the information, and the employee's position within the corporation.

*Claris v. Oregon Short Liner R.R. Co.*, 56 Idaho 169, 51 P.2d 217 (1935).

*Evanston Bank v. Conticommodity Svcs., Inc.*, 623 F. Supp. 1014, 1035 (N.D. Ill. 1985) (citing Restatement (Second) Agency § 275 cmt. c).

*Bryant v. Livigni*, 250 Ill. App. 3d 303, 308, 619 N.E.2d 550, 555 (1993).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**DEFENDANT'S PROPOSED**

**INSTRUCTION NO. 8**

The purpose of compensatory damages awards is to put the injured party back in the position it would have been in absent a defendant's wrongful act. You may not award damages in an amount that would exceed the plaintiff's total injury.

*Gilbert v. City of Caldwell*, 112 Idaho 386, 395,  
732 P.2d 355, 364 (Ct. App. 1987).

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_



**DEFENDANT'S PROPOSED**

**INSTRUCTION NO. 9**

Damages for lost net profits cannot be speculative and must be proven with reasonable certainty. This requires that evidence of overhead expenses and other costs of producing the income be presented and deducted from gross revenues.

*Jolley v. Puregro Co.*, 94 Idaho 702, 706-07, 496 P.2d 939, 934-44 (1972), *abrogated on other grounds by Cheney v. Palos Verdes Inv. Corp.*, 1014 Idaho 897, 655 P.2d 661 (1983).

*McOmber v. Nuckols*, 82 Idaho 280, 283, 353 P.2d 398, 400-01 (1960).

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

## DEFENDANT'S PROPOSED

### INSTRUCTION NO. 10

A claim of tortious interference with economic expectancy requires proof that plaintiff had a reasonable expectation of entering into a valid business relationship with a third party. A valid business expectancy requires a reasonable likelihood that the expectancy would have come to fruition. A mere hope of a business relationship is not a valid business expectancy.

*Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 209, 412 A.2d 466, 471 (1980).

*Citylink Grp., Ltd. v. Hyatt Corp.*, 313 Ill. App. 3d 829, 840, 729 N.E.2d 869, 877 (2000).

*First Public Corp. v. Parfet*, 246 Mich. App. 182, 199, 631 N.W.2d 785 (Mich. Ct. App. 2001), *vacated in part on other grounds*, 468 Mich. 101, 658 N.W.2d 477 (Mich. 2003).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**DEFENDANT'S PROPOSED**

**INSTRUCTION NO. 11**

In order to prove that a defendant's interference with the plaintiff's contractual relation was intentional, the plaintiff must show either that the defendant desired to interfere with plaintiff's contractual relation or that the defendant knew the interference was certain or substantially certain to occur as a result of his action.

*Highland Enter., Inc. v. Barker*, 133 Idaho 330, 340, 986 P.2d 996, 1006 (1999) (citing Restatement (Second) of Torts § 766B cmt. d (1977)).

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

DEFENDANT'S PROPOSED

INSTRUCTION NO. 12

Damages must be reasonable. You are instructed that if you find that the plaintiff is entitled to damages, then you must only award such damages that have been proved with reasonable certainty.

You are not permitted to award speculative damages, which means compensation for future loss or harm which, although possible, is conjectural or not reasonably certain to occur in the future.

*Trees v. Kersey*, 138 Idaho 3, 56 P.3d 765, 733 (2002).

*Gen. Auto Parts Co., Inc. v. Genuine Parts Co.*, 132 Idaho 849, 859, 979 P.2d 1207, 1217 (1999).

*Galindo v. Hibbard*, 106 Idaho 302, 306, 678 P.2d 94, 98 (Ct. App. 1984).

*Rindlisbaker v. Wilson*, 95 Idaho 752, 761, 519 P.2d 421, 430 (1974).

*McLean v. City of Spirit Lake*, 91 Idaho 779, 783-84, 430 P.2d 670, 674-75 (1967).

*McGuire v. Post Falls Lumber & Mfg. Co.*, 23 Idaho 608, 131 P. 654 (1913).

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**DEFENDANT'S PROPOSED**

**INSTRUCTION NO. 13**

With regard to plaintiff's claim for breach of contract and tortious interference with contract, only damages that fairly compensate plaintiff for its loss are permitted. Any award of damages in this context must be calculated to place the plaintiff in the same economic position it would have been in if the contract had been performed.

*See Gilbert v. City of Caldwell*, 112 Idaho 386, 395, 732 P.2d 355, 364 (Ct. App. 1987).

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

## DEFENDANT'S PROPOSED

### INSTRUCTION NO. 14

In considering whether any interference by a defendant was wrongful, you may consider the following factors:

- (a) the nature of the defendant's conduct,
- (b) the defendant's motive,
- (c) the interests of plaintiff with which the defendant's conduct is said to interfere,
- (d) the interest sought to be advanced by the defendant,
- (e) the social interests in protecting the freedom of action of the defendant and the contractual interests of the plaintiff;
- (f) the proximity or remoteness of the defendant's conduct to the interference and
- (g) the relations between the parties.

*BECO Const. Co. v. J-U-B Engineers, Inc.*, 145 Idaho 719, 723-24, 184 P.3d 844, 848-49 (2008).

*Jensen v. Westberg*, 115 Idaho 1021, 1027, 772 P.2d 228, 234 (Ct.App. 1988) (citing Restatement (Second) of Torts § 766A cmt. e (1977)).

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

NO. \_\_\_\_\_ FILED 1:42  
A.M. \_\_\_\_\_ P.M.

DEC 24 2014

CHRISTOPHER D. RICH, Clerk  
By KATRINA THIESSEN  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
Sarah H. Arnett, ISB No. 6545  
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SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S  
REQUESTED JURY INSTRUCTIONS**


RELATED COUNTER ACTIONS

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its counsel of record, the law firm of Parsons Behle & Latimer, and pursuant to Rule 51 of the Idaho Rules of Civil Procedure, respectfully requests the Court to instruct the jury with the attached requested instructions.

Because certain rulings on pretrial motions filed by the parties are pending and given that ASI anticipates filing additional pretrial motions, ASI reserves the right to revise, supplement or withdraw any of the attached requested instructions, or to submit further instructions, at any time prior to the submission of the same to the jury.

DATED this 24<sup>th</sup> day of December, 2014.

PARSONS BEHLE & LATIMER

By   
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*



**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Introductory Instruction to Jury]**

These instructions explain your duties as jurors and define the law that applies to this case. It is your duty to determine the facts, to apply the law set forth in these instructions to those facts, and in this way to decide the case. Your decision should be based upon a rational and objective assessment of the evidence. It should not be based on sympathy or prejudice.

It is my duty to instruct you on the points of law necessary to decide the case, and it is your duty to follow the law as I instruct. You must consider these instructions as a whole, not picking out one and disregarding others. The order in which these instructions are given or the manner in which they are numbered has no significance as to the importance of any of them. If you do not understand an instruction, you may send a note to me through the bailiff, and I will try to clarify or explain the point further.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits admitted into evidence, and any stipulated or admitted facts. While the arguments and remarks of the attorneys may help you understand the evidence and apply the instructions, what they say is not evidence. If an attorney's argument or remark has no basis in the evidence, you should disregard it.

The production of evidence in court is governed by rule of law. At times during the trial, I sustained an objection to a question without permitting the witness to answer it, or to an offered exhibit without receiving it into evidence. My rulings are legal matters, and are solely my responsibility. You must not speculate as to the reason for any objection, which was made, or my ruling thereon, and in reaching your decision you may not consider such a question or exhibit or

speculate as to what the answer or exhibit would have shown. Remember, a question is not evidence and should be considered only as it gives meaning to the answer.

There were occasions where an objection was made after an answer was given or the remark was made, and in my ruling on the objection I instructed that the answer or remark be stricken, or directed that you disregard the answer or remark and dismiss it from your minds. In your deliberations, you must not consider such answer or remark, but must treat it as though you had never heard it.

The law does not require you to believe all of the evidence admitted in the course of the trial. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it. In so doing, you bring with you to this courtroom all of the experience and background of your lives. There is no magical formula for evaluating testimony. In your everyday affairs, you determine for yourselves whom you believe, what you believe and how much weight you attach to what you are told. The considerations you use in making the more important decisions in your everyday dealings are the same considerations you should apply in your deliberations in this case.

**Authority:**

IDJI 1.00

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Deliberation Procedures]

During your deliberations, you will be entitled to have with you my instructions concerning the law that applies to this case, the exhibits that have been admitted into evidence and any notes taken by you in the course of the trial proceedings.

If you take notes during the trial, be careful that your attention is not thereby diverted from the witness or his testimony; and you must keep your notes to yourself and not show them to other persons or jurors until the jury deliberations at the end of the trial.

**Authority:**

IDJI 1.01

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Corporate Parties]

The corporations involved in this case are entitled to the same fair and unprejudiced treatment that an individual would be under like circumstances. You should decide this case with the same impartiality that you would use in deciding a case between individuals.

**Authority:**

IDJI 1.02

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Admonition to Jury]

There are certain things you must not do during this trial:

1. You must not associate in any way with the parties, any of the attorneys or their employees, or any of the witnesses.
2. You must not discuss the case with anyone, or permit anyone to discuss the case with you. If anyone attempts to discuss the case with you, or to influence your decision in the case, you must report it to me promptly.
3. You must not discuss the case with other jurors until you retire to the jury room to deliberate at the close of the entire case.
4. You must not make up your mind until you have heard all of the testimony and have received my instructions as to the law that applies to the case.
5. You must not contact anyone in an attempt to discuss or gain a greater understanding of the case.
6. You must not go to the place where any alleged event occurred.

**Authority:**

IDJI 1.03

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Statement of Claims Not Evidence]

Any statement by me identifying a claim of a party is not evidence in this case. I have advised you of the claims of the parties merely to acquaint you with the issues to be decided.

**Authority:**

IDJI 1.05

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Communications with Court]

If it becomes necessary during your deliberations to communicate with me, you may send a note signed by one or more of you to the bailiff. You should not try to communicate with me by any means other than such a note.

During your deliberations, you are not to reveal to anyone how the jury stands on any of the questions before you, numerically or otherwise, unless requested to do so by me.

**Authority:**

IDJI 1.11

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Completion of Verdict Form on Special Interrogatories]

On retiring to the jury room, select one of your number as a foreman, who will preside over your deliberations.

An appropriate form of verdict will be submitted to you with any instructions. Follow the directions on the verdict form, and answer all of the questions required of you by the instructions on the verdict form.

A verdict may be reached by three-fourths of your number, or nine of you. As soon as nine or more of you shall have agreed upon each of the required questions in the verdict, you should fill it out as instructed, and have it signed. It is not necessary that the same nine agree on each question. If your verdict is unanimous, your foreman alone will sign it; but if nine or more, but less than the entire jury, agree, then those so agreeing will sign the verdict.

As soon as you have completed and signed the verdicts, you will notify the bailiff, who will then return you into open court.

**Authority:**

IDJI 1.15.2

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____



PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Burden of Proof – Preponderance of Evidence]

When I say that a party has the burden of proof on a proposition, or use the expression “if you find” or “if you decide,” I mean you must be persuaded that the proposition is more probably true than not true.

**Authority:**

IDJI 1.20.1

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Burden of Proof – Clear and Convincing Evidence]

When I say a party has the burden of proof on a proposition by clear and convincing evidence, I mean you must be persuaded that it is highly probable that such proposition is true. This is a higher burden than the general burden that the proposition is more probably true than not true.

**Authority:**

IDJI 1.20.2

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Deposition Testimony]

Certain evidence is about to be presented to you by deposition. A deposition is testimony taken under oath before the trial and preserved in writing and/or upon video tape. This evidence is entitled to the same consideration you would give had the witness testified from the witness stand.

You will only receive this testimony in open court. Although there is a record of the testimony you are about to hear, this record will not be available to you during your deliberations.

**Authority:**

IDJI 1.22

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Circumstantial Evidence with Definition]

Evidence may be either direct or circumstantial. Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves the fact, by proving one or more facts from which the fact at issue may be inferred.

The law makes no distinction between direct and circumstantial evidence as to the degree of proof required; each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

**Authority:**

IDJI 1.24

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Evidence Admitted for Limited Purpose]

In this case, certain evidence was admitted for a limited purpose. I called your attention to this when the evidence was admitted. I remind you that whenever evidence was admitted for a limited purpose, you must not consider such evidence for any purpose other than the limited purpose for which it was admitted.

**Authority:**

IDJI 1.28

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Breach of Contract]

ASI has asserted breach of contract claims against each of the individual defendants David Roberts, Gyle Yearsley and William Tiffany. In order to hold individual defendants David Roberts, Gyle Yearsley and William Tiffany liable for breach of contract, ASI has the burden of proving each of the following propositions as to each defendant:

1. A contract existed between ASI and the individual defendant;
2. The individual defendant breached the contract;
3. ASI has been damaged on account of the breach; and
4. The amount of the damages.

If you find from your consideration of all the evidence that any of the propositions in this instruction has not been proved, your verdict should be for the individual defendant.

**Authority:**

IDJI 6.10.1 (modified)

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Breach of Contract – Express Written Consent]

When used in the Employee Confidentiality Agreements, the term “express written consent” means consent or permission that is clearly, definitively, and unmistakably stated in writing.

**Authority:**

*Swanson v. Beco Construction* 145 Idaho 59, 63, 175 P.3d 748, 752 (2007) (setting forth the well-recognized principle of contract construction that the “ ‘intent of the parties is determined from the plain meaning of the words.’ ”); Black’s Law Dictionary, 346 (9th ed. 2009) (“express consent” means “[c]onsent that is clearly and unmistakably stated.”); Oxford English Dictionary, 896 (5th ed. 2002) (“express” is defined as “[d]efinitively stated and not merely implied; definitely formulated; explicit; unmistakable in import” and further defining “explicit” as “[d]istinctly expressing all that is meant; leaving nothing merely implied or suggested; unambiguous; clear.”)

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Breach of Contract – Interpretation of Contract]**

You may not consider any explanation or interpretation of the contract offered by any witness, or any oral agreement of the parties occurring before execution of the written agreement, which is inconsistent with the plain, ordinary meaning of the written agreement. While you may consider the testimony of witnesses if necessary to clarify an ambiguity, you may not consider such testimony to completely change the agreement, or to construe a term of the agreement in such a fashion that it no longer fits with the other, non-ambiguous terms or parts.

**Authority:**

IDJI 6.08.2

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____



**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Breach of Contract – Affirmative Defenses]**

In this case the individual defendants David Roberts, Gyle Yearsley and William Tiffany asserted certain affirmative defenses to ASI's breach of contract claim. Each of these defendants has the burden of proof on each of the affirmative defenses asserted.

Each of these defendants claims that his execution of the Employee Confidentiality Agreement with ASI was obtained by fraud.

**Authority:**

IDJI 6.11 (modified)

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Fraud – Affirmative Defense]**

To establish the defense of fraud, each of these individual defendants has the burden of proving by clear and convincing evidence all of the following propositions:

1. ASI made a representation of a past or present fact;
2. The representation was false;
3. The represented fact was important;
4. ASI knew the representation was false;
5. Each defendant was not aware of the falsity of the representation;
6. ASI intended that each defendant rely upon the representation in agreeing to enter into the contract;
7. Each defendant did rely upon the representation;
8. Each defendant's reliance was justified; and
9. Each defendant has returned or has offered to return to ASI all of the payments in the form of wages, salary and benefits he received while an employee of ASI.

If you find from your consideration of all the evidence that the propositions required of that defendant has been proved, then your verdict on the breach of contract claim should be for that defendant. If you find from your consideration of all the evidence that any of the propositions has not been proved, then the that defendant has not proved the affirmative defense in this case.

**Authority:**

IDJI 6.27.1 (Modified);

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Fraud - Reasonable Reliance]

If you decide that the false statement attributable to ASI as claimed by individual defendants David Roberts, Gyle Yearsley, and William Tiffany was material, you must then decide whether it was reasonable for each of these individual defendants to rely on the statement.

In making this decision, take into consideration each defendant's intelligence, knowledge, education, and experience. However, it is not reasonable for anyone to rely on a false statement if facts that are within his observation show that it is obviously false.

**Authority:**

California Civil Jury Instructions 1908; (Modified); IDJI 4.60 -Fraud Issues; *Samuel v. Hepworth, Nunguster & Lezamiz, Inc.*, 134 Idaho 84, 90, 996 P.2d 303, 308 (2000) (setting forth the elements of fraud).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Fraud – Material or Important Matter]

A matter is material if a reasonable person would find it important in determining his choice of action.

**Authority:**

*Watts v. Krebs*, 131 Idaho 616, 619, 962 P.2d 387, 390-91 (1998) ( “ ‘Materiality refers to the importance of the misrepresentation in determining the plaintiff’s course of action.’ ” ) (citing *G & M Farms*, 119 Idaho at 521, 808 P.2d at 858 (quoting *Edmark Motors, Inc. v. Twin Cities Toyota*, 111 Idaho 846, 727 P.2d 1274 (Ct.App.1986)) and citing Restatement (Second) of Torts § 538(2) (1977); IDJI 4.60 –Fraud Issues (Modified); *Samuel v. Hepworth, Nunguster & Lezamiz, Inc.*, 134 Idaho 84, 90, 996 P.2d 303, 308 (2000) (setting forth the elements of fraud);California Civil Jury Instructions 1908.

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Breach of Implied Covenant of Good Faith and Fair Dealing]**

In every contract or agreement there is an implied promise of good faith and fair dealing. This means that each party must perform in good faith the obligations imposed by their agreement. ASI claims that the individual defendants, David Roberts, Gyle Yearsley, and William Tiffany, each breached their duty of good faith and fair dealing under their respective Employee Confidentiality Agreements.

To prove David Roberts, Gyle Yearsley, and William Tiffany each breached their duty of good faith and fair dealing, ASI has the burden of proving all of the following propositions as to each of these defendants:

1. That a contract existed between ASI and the defendant;
2. That the defendant violated, nullified, or significantly impaired a benefit or right of ASI under the contract;
3. That ASI has been damaged on account of the breach; and
4. The amount of ASI's damages.

If you find from your consideration of all the evidence that each of the propositions required of ASI has been proved, then you must consider the issue of the affirmative defenses raised by the each of the defendants, and explained in the next instructions. If you find from your consideration of all the evidence that any of the propositions in this instruction has not been proved against a defendant, your verdict should be for that defendant.

**Authority:**

IDJI 6.10.1- Breach of bilateral contract – general case (Modified); *Idaho First Nat'l Bank v. Bliss Valley Foods, Inc.* 121 Idaho 266, 287-89, 824 P.2d 841, 862-63 (1991); *Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 891-92, 243 P.3d 1069, 1079-80 (2010).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Duty of Loyalty]**

ASI claims that it was harmed by each of the individual defendants David Roberts, Gyle Yearsley, and William Tiffany's breach of his respective fiduciary duty of loyalty to ASI.

The fiduciary duty of loyalty requires that throughout an employment relationship, an employee not place himself in a position where his own interests become antagonistic to those of his employer. An employee must refrain from competing with his employer and from taking action on behalf of or otherwise assisting his employer's competitors.

In order to prove a claim for breach of the fiduciary duty of loyalty against each of the individual defendants David Roberts, Gyle Yearsley, and William Tiffany, ASI must prove all of the following propositions as to each of the defendants:

1. The defendant was an employee of ASI;
2. The defendant acted in a manner where he served his own private interests which were adverse to ASI's interests, or acted on behalf of a party whose interests were adverse to ASI's interests, or assisted a competitor of ASI;
3. The defendant's conduct caused harm to ASI; and
4. The nature and extent of ASI's damages and the amount thereof.

If you find from your consideration of all the evidence that all of the foregoing propositions have been proved against the defendant, then your verdict as to that defendant should be for ASI. If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved against the defendant, then your verdict should be for that defendant.



**Authority:**

*Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 892, 243 P.3d 1069, 1080-81 (2010)  
(quoting *Jensen v. Sidney Stevens Implement Co.*, 36 Idaho 348, 353, 210 P. 1003, 1005 (1922)  
and Restatement (Third) of Agency § 8.04).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Tortious Interference with Prospective Economic Advantage – Individuals & Sage]**

With respect to the ASI's claim for tortious interference with contract against defendants David Roberts, Gyle Yearsley, William Tiffany and Sage Silicon Solutions, LLC., ASI has the burden of proving each of the following propositions:

1. The existence of a valid economic expectancy;
2. The defendants knew or should have known of the expectancy;
3. The defendants intentionally interfered with the expectancy, inducing its termination;
4. The defendants interfered with the expectancy for an improper purpose or used improper means;
5. ASI was damaged as a result of the defendants' interference; and
6. The amount of ASI's damages.

**Authority:**

IDJI 4.70 – (modified); *Silicon Int'l v. Monsanto Co.*, 155 Idaho 538, 550-51, 314 P.3d 593, 605-06 (2013); *Highland Enterprises v. Barker.*, 986 P.2d 996, 1004-05, 133 Idaho 330, 338-39 (1999).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Tortious Interference with Contract – Zilog]

With respect to the ASI's claim for tortious interference with contract against Zilog, Inc.,  
ASI has the burden of proving each of the following propositions:

1. ASI was a party to existing contracts;
2. Zilog knew or should have known of the existence of the contracts;
3. Zilog intentionally interfered with the contracts, causing breaches;
4. ASI was damaged as a proximate result of the Zilog's interference; and
5. The nature and extent of damage, and the amount thereof.

**Authority:**

IDJI 4.70 – (modified); *Highland Enterprises v. Barker*, 133 Idaho 330, 338, 986 P.2d 996, 1004 (1999); *Silicon Int'l v. Monsanto Co.*, 155 Idaho 538, 314 P.3d 593 (2013).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Tortious Interference with Prospective Economic Advantage - Zilog]

With respect to the ASI's claim for tortious interference with prospective economic advantage against Zilog, Inc., ASI has the burden of proving each of the following propositions:

1. The existence of a valid economic expectancy;
2. Zilog knew or should have known of the expectancy;
3. Zilog intentionally interfered with the expectancy, inducing its termination;
4. Zilog interfered with the expectancy for an improper purpose or used improper means;
5. ASI was damaged as a result of Zilog's interference; and
6. The amount of ASI's damages.

**Authority:**

IDJI 4.70 – (modified); *Silicon Int'l v. Monsanto Co.*, 155 Idaho 538, 550-51, 314 P.3d 593, 605-06 (2013); *Highland Enterprises v. Barker.*, 986 P.2d 996, 1004-05, 133 Idaho 330, 338-39 (1999).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Cautionary Instruction on Damages]**

By giving you instructions on the subject of damages, I do not express any opinion as to whether the plaintiff is entitled to damages.

**Authority:**

IDJI 9.00

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Damages - Lost Profits]**

If you decide ASI is entitled to recover from any of the individual defendants David Roberts, Gyle Yearsley, William Tiffany, defendant Sage Silicon Solutions, Inc. and/or defendant Zilog, Inc., you must determine the amount of money that will reasonably and fairly compensate ASI for the following element of damages proved by the evidence to have resulted from the defendant's conduct:

- Lost profits

To recover damages for lost profits ASI must prove it is reasonably certain it would have earned profits but for the defendant's conduct.

To decide the amount of lost profits you must determine the gross amount ASI would have received but for the defendant's conduct and then subtract from that amount the expenses ASI would have had if defendant's conduct had not occurred.

The amount of lost profits need not be calculated with mathematical precision, but there must be a reasonable basis for computing the loss.

Whether ASI has proved loss of profits is for you to determine.

**Authority:**

IDJI 9.03 –Damages For Breach Of Contract – General Format (Modified); IDJI 9.01 –Damages Instruction For Injuries To Plaintiff –General Case (Modified); California Civil Jury Instructions 352, 3903N; *Trilogy v. Johnson*, 144 Idaho 844, 846, 172 P.3d 1119,1121 (2007); *Williams v. Bone*, 74 Idaho 185, 188, 259 P.2d 810,812 (1953).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Damages - Recruiting and Training Expenses]**

If you decide ASI is entitled to recover from defendant Zilog, Inc., you should also determine the amount of money that will reasonably and fairly compensate ASI for the following additional element of damages proved by the evidence to have been caused by Zilog's conduct:

- Recruiting and training expenses incurred by ASI

Whether ASI has proved any of these damages is for you to decide.

**Authority:**

IDJI 9.03 –Damages For Breach Of Contract – General Format (Modified); IDJI 9.01 –Damage Instruction For Injuries To Plaintiff – General Case (Modified).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____



**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Fraud Counterclaim]**

The individual defendants David Roberts, Gyle Yearsley and William Tiffany have asserted a fraud in the inducement counterclaim against ASI alleging that the execution of their respective Employee Confidentiality Agreement was obtained by fraud. Each of these defendants has the burden of proving each of the following propositions by clear and convincing evidence:

1. That ASI stated a fact to the individual defendant;
2. The statement was false;
3. The statement was material;
4. The individual defendant either knew the statement was false or was unaware of whether the statement was true at the time the statement was made.
5. The individual defendant did not know that the statement was false;
6. ASI intended for the individual defendant to rely upon the statement and act upon it in a manner reasonably contemplated;
7. The individual defendant did rely upon the truth of the statement;
8. The individual defendant's reliance was reasonable under all the circumstances;
9. The individual defendant suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to each individual defendant, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for that individual defendant on this issue. If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for ASI.

**Authority:**

IDJI 4.60 (modified)

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Fraud Counterclaim - Reasonable Reliance]

If you decide that the false statement attributable to ASI as claimed by individual defendants David Roberts, Gyle Yearsley, and William Tiffany was material, you must then decide whether it was reasonable for each of these individual defendants to rely on the statement.

In making this decision, take into consideration each defendant's intelligence, knowledge, education, and experience. However, it is not reasonable for anyone to rely on a false statement if facts that are within his observation show that it is obviously false.

**Authority:**

California Civil Jury Instructions 1908; (Modified); IDJI 4.60 –Fraud Issues; *Samuel v. Hepworth, Nunguster & Lezamiz, Inc.*, 134 Idaho 84, 90, 996 P.2d 303, 308 (2000) (setting forth the elements of fraud).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Fraud Counterclaim – Material or Important Matter]

A matter is material if a reasonable person would find it important in determining his choice of action.

**Authority:**

*Watts v. Krebs*, 131 Idaho 616, 619, 962 P.2d 387, 390-91 (1998) ( “ ‘Materiality refers to the importance of the misrepresentation in determining the plaintiff’s course of action.’ ” ) (citing *G & M Farms*, 119 Idaho at 521, 808 P.2d at 858 (quoting *Edmark Motors, Inc. v. Twin Cities Toyota*, 111 Idaho 846, 727 P.2d 1274 (Ct.App.1986)) and citing Restatement (Second) of Torts § 538(2) (1977); IDJI 4.60 –Fraud Issues (Modified); *Samuel v. Hepworth, Nunguster & Lezamiz, Inc.*, 134 Idaho 84, 90, 996 P.2d 303, 308 (2000) (setting forth the elements of fraud);California Civil Jury Instructions 1908.

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[*Quantum Meruit* Counterclaim]

Defendant Sage Silicon Solutions, LLC claims that under the doctrine of *quantum meruit* or implied contract, it is entitled to be compensated for the value of a 16-bit timer which it claims to have owned prior to the individual defendants David Roberts, Gyle Yearsley and William Tiffany's respective employments with ASI.

An implied-in-fact contract is a contract where the terms and existence of the contract are demonstrated by the conduct of the parties, with the request of one party and the performance by the other often being inferred from the circumstances attending the performance. To find an implied-in-fact contract, the facts must be such that the intent of the parties to make a contract can be inferred from their conduct. An implied-in-fact contract is given the same legal effect as any other contract.

To establish an implied-in-fact contract, Sage Silicon Solutions, LLC has the burden of proof on each of the following propositions:

1. The circumstances imply a request by ASI for performance by Sage Silicon Solutions, LLC; and
2. The circumstances imply a promise by ASI to compensate Sage Silicon Solutions, LLC for such performance; and
3. Sage Silicon Solutions, LLC performed as requested.

If you find from your consideration of all the evidence that each of the propositions required of Sage Silicon Solutions, LLC has been proved, then your verdict must be for Sage Silicon Solutions, LLC. If you find from your consideration of all the evidence that any of these propositions have not been proved, your verdict should be for ASI.

**Authority:**

IDJI 6.07.1- Equitable theories - implied in facts contract

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[*Quantum Meruit* Counterclaim – Damages]

Recovery under a *quantum meruit* theory is measured by the reasonable value of the goods received.

As used here, the term “value” means the amount of money that a willing buyer would pay and a willing seller would accept for the item in question in an open marketplace, in the item’s condition as it existed immediately prior to the occurrence in question.

**Authority:**

*Barry v. Pac. W. Const., Inc.*, 140 Idaho 827, 834, 103 P.3d 440, 447 (2004).

IDJI 9.12

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_**

**[Unjust Enrichment Counterclaim]**

Defendant and Sage Silicon Solutions, LLC claims that ASI received a benefit in the form of the value of a 16-bit timer that it claims to have owned prior to the individual defendants David Roberts, Gyle Yearsley and William Tiffany's respective employments with ASI.

Even if there is no agreement between the parties, under certain circumstances where a party has been unjustly enriched by the actions of another the law will require that party to compensate the other for the unjust gain. To recover under this theory, Sage Silicon Solutions, LLC has the burden of proving each of the following:

1. Sage Silicon Solutions, LLC provided a benefit to ASI;
2. ASI accepted the benefit; and
3. Under the circumstances, it would be unjust for ASI to retain the benefit without compensating Sage Silicon Solutions, LLC for its value.

If you find from your consideration of all the evidence that each of the propositions required of Sage Silicon Solutions, LLC has been proved, then your verdict must be for Sage Silicon Solutions, LLC. If you find from your consideration of all the evidence that any of these propositions have not been proved, your verdict should be for ASI.



**Authority:**

IDJI 6.07.2 - Unjust enrichment – equitable theories; for the elements of unjust enrichment; *see Hertz v. Fiscus*, 98 Idaho 456, 567 P.2d 1 (1977); *Common Builder, Inc. v. Rice*, 126 Idaho 616, 888 P.2d 790 (App. 1995).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_\_\_

[No Unjust Enrichment if Gift]

If the plaintiff intended to make a gift of the benefit to the defendant, there is no unjust enrichment.

**Authority:**

IDJI 6.07.3

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Unjust Enrichment – Damages]

The measure of damages in a claim of unjust enrichment is the value of the benefit bestowed which, in equity, would be unjust to retain without compensation. The measure of damages is not necessarily the value of the money, labor and materials provided, but the amount of benefit received which would be unjust to retain.

As used here, the term “value” means the amount of money that a willing buyer would pay and a willing seller would accept for the item in question in an open marketplace, in the item's condition as it existed immediately prior to the occurrence in question.

**Authority:**

*Gillette v. Storm Circle Ranch*, 101 Idaho 663, 666, 619 P.2d 1116, 1119 (1980).

IDJI 9.12

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Concluding Remarks]

I have given you the rules of law that apply to this case. I have instructed you regarding matters that you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing arguments to you and then you will retire to the jury room for your deliberations.

Each of you has an equally important voice in the jury deliberations. Therefore, the attitude and conduct of jurors at the beginning of the deliberations are important. At the outset of deliberations, it is rarely productive for a juror to make an emphatic expression of opinion on the case or to state how he or she intends to vote. When one does that at the beginning, one's sense of pride may be aroused and there may be reluctance to change that position, even if shown that it is wrong. Remember that you are not partisans or advocates, but you are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

Consult with one another. Consider each other's views. Deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

**Authority:**

IDJI 1.13

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 24<sup>th</sup> day of December, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
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Pocatello, ID 83205-4229  
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Facsimile: (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

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Kennedy K. Luvai

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

DEC 30 2014

CHRISTOPHER D. RICH, Clerk  
By DEBBIE SCOTT  
DEPUTY

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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**SUPPLEMENT TO PLAINTIFF  
AMERICAN SEMICONDUCTOR,  
INC.'S REQUESTED JURY  
INSTRUCTIONS**

RELATED COUNTER ACTIONS

ORIGINAL


TR

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its counsel of record, the law firm of Parsons Behle & Latimer, and pursuant to Rule 51 of the Idaho Rules of Civil Procedure, respectfully submits the following *Supplement* to Plaintiff American Semiconductor, Inc.'s Requested Jury Instructions ("*Supplement*"). This *Supplement* is intended to augment and not to replace the jury instructions set forth in Plaintiff American Semiconductor, Inc.'s Requested Jury Instructions (filed, Dec. 24, 2014).

Because certain rulings on pretrial motions filed by the parties are pending and given that ASI anticipates filing additional pretrial motions, ASI reserves the right to revise, supplement or withdraw any of the attached requested instructions, or to submit further instructions, at any time prior to the submission of the same to the jury.

DATED this 30th day of December, 2014.

PARSONS BEHLE & LATIMER

By   
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Tortious Interference with Prospective Economic Advantage – Expectancy Defined]

To establish existence of a valid economic expectancy, ASI must prove it had a reasonable expectation that a business relationship of pecuniary value would come to fruition.

**Authority:**

*Highland Enterprises v. Barker*, 133 Idaho 330, 338, 986 P.2d 996, 1004 (1999); *Scymanski v. Dufault*, 80 Wash.2d 77, 84-85, 491 P.2d 1050, 1054-55 (1972); *Sea-Pac Co., Inc. v. United Food and Commercial Workers*, 103 Wash.2d 800, 805, 699 P.2d 217, 220 (1985); *Manna Funding LLC v. Kittitas Co.*, 173 Wash. App. 879, 897, 295 P.3d 1197, 1207 (2013).

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_



PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Tortious Interference with Prospective Economic Advantage – Intent Defined]

To establish intent, ASI must prove that either that the defendant desired to interfere with ASI's prospective economic opportunity or that the defendant knew the interference was certain or substantially certain to result from his or its actions.

The defendant need not have acted with the specific intent to interfere with ASI's prospective economic relationship, but need only have known the interference to have been a necessary consequence of his or its.

**Authority:**

*Highland Enterprises, Inc. v. Barker*, 133 Idaho 330, 338, 340, 986 P.2d 996, 1004, 1006 (1999)  
(citing Restatement (Second) of Torts § 766B cmts. d, j (1977)).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

**[Tortious Interference with Prospective Economic Advantage – Wrongfulness Defined]**

To establish that the interference was wrongful, ASI must prove either that the defendant had an improper objective or purpose to harm ASI or that the defendant used a wrongful means to cause injury to ASI's prospective economic interest.

**Authority:**

*Idaho First Nat'l Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 285-86, 824 P.2d 841, 860-61 (1991); *Pleas v. City of Seattle*, 112 Wash.2d 794, 804, 774 P.2d 1158, 1163 (1989).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

**[Tortious Interference with Prospective Economic Advantage – Knowledge Defined]**

To establish that the defendant had knowledge of ASI's economic expectancy, ASI must prove that the defendant either had actual knowledge of the expectancy or had knowledge of facts which would lead a reasonable person to believe that such an economic interest existed.

**Authority:**

*Highland Enterprises, Inc. v. Barker*, 133 Idaho 330, 338-39, 986 P.2d 996, 1004-05 (1999).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Tortious Interference with Contract – Intent Defined]

To establish intent, ASI must prove that either Zilog desired to interfere with ASI's existing contracts or that Zilog knew the interference was certain or substantially certain to result from its actions.

Zilog need not have acted with the specific intent to interfere with ASI's contractual relationships, but need only have known the interference to have been a necessary consequence of its actions.

**Authority:**

*Barlow v. International Harvester Co.*, 95 Idaho 881, 893, 522 P.2d 1102, 1114 (1977) (setting for the elements for a tortious interference with contract claim); *Highland Enterprises, Inc. v. Barker*, 133 Idaho 330, 338, 340, 986 P.2d 996, 1004, 1006 (1999) (citing Restatement (Second) of Torts § 766B cmts. d, j (1977)).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Tortious Interference with Contract – Knowledge Defined]

To establish that had knowledge of ASI's contracts with Roberts, Yearsley and Tiffany, ASI must prove that Zilog either had actual knowledge of the contracts or had knowledge of facts which would lead a reasonable person, in Zilog's position, to believe that such contracts existed.

**Authority:**

*Barlow v. International Harvester Co.*, 95 Idaho 881, 893, 522 P.2d 1102, 1114 (1977) (setting for the elements for a tortious interference with contract claim); *Highland Enterprises, Inc. v. Barker*, 133 Idaho 330, 338-39, 986 P.2d 996, 1004-05 (1999).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_

[Tortious Interference with Contract – Wrongfulness Defined]

To establish Zilog's interference was wrongful, ASI must prove either that Zilog had an improper objective or purpose to harm ASI or the Zilog used a wrongful means to cause injury to ASI's contractual relationships with Roberts, Yearsley and Tiffany.

**Authority:**

*Barlow v. International Harvester Co.*, 95 Idaho 881, 893, 522 P.2d 1102, 1114 (1977) (setting for the elements for a tortious interference with contract claim); *Idaho First Nat'l Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 285-86, 824 P.2d 841, 860-61 (1991); *Pleas v. City of Seattle*, 112 Wash.2d 794, 804, 774 P.2d 1158, 1163 (1989).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of December, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S OBJECTIONS AND  
COUNTER-DESIGNATIONS TO  
PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S LIST OF  
DEPOSITION DESIGNATIONS FOR  
USE AT TRIAL**

NO. *Am*  
A.M. *Am* FILED *Am*

**JAN 02 2015**

**CHRISTOPHER D. RICH, Clerk**  
By **JAMIE MARTIN**  
DEPUTY



COMES NOW Defendant Zilog, Inc. ("Zilog"), by and through its counsel of record, and hereby objects to Plaintiff American Semiconductor, Inc.'s List of Deposition Designations for Use at Trial, and counter-designates portions of such depositions as follows:

1. **Witness Name: Lloyd Dat Huynh**  
**Date of Deposition: February 12, 2014**

**Objection to Plaintiff's Entire Designation.** Zilog objects to **all** of ASI's designations of the deposition testimony of Lloyd Dat Huynh because all such designations pertain to software license agreements that the Court ruled on May 2, 2014, are not relevant to any issue in this case. *See* Reporter's Transcript of Proceedings: Motion Hearing of May 2, 2014, 53:2-6. If the Court were to reverse its ruling on that issue at this late date, Zilog would suffer extreme unfair prejudice.

**Objection to Plaintiff's Designation 92:19-93:2:** Zilog objects to ASI's designation of page 92, line 19, through page 93, line 2, of Mr. Huynh's deposition testimony because such testimony refers to Deposition Exhibit No. 107, which is not listed as a trial exhibit on any party's trial exhibit list.

**Objection to Plaintiff's Designation 96:18-25:** Zilog objects to ASI's designation of page 96, lines 18 through 25, of Mr. Huynh's deposition testimony, and to any attempt by ASI to introduce Deposition Exhibit No. 90 (Plaintiff's Trial Exhibit No. 38), for lack of foundation under IRE 901, as irrelevant and inadmissible under IRE 402, and as inadmissible pursuant to IRE 403 because any alleged probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay or waste of time. The exhibit consists of three pages: Z003374, Z003375 and

Z003906. The first two pages (Z003374-75) of the exhibit are a two-page unsigned *draft* of a CAST Evaluation License Agreement with Zilog, and the third page (Z003906) of the exhibit is the second page of the *final* signed agreement. The final signed agreement consists of Z003905 (which is not part of the exhibit) and Z003906. The first page (Z003905) of the *final* signed agreement is materially different from the first page (Z003374) of the *draft* agreement because the first page (Z003905) of the final signed agreement expressly permits Zilog's employees "and consultants" to access the software that is the subject matter of the agreement, whereas the first page (Z003374) of the *draft* of the agreement does *not* include the words "and consultants." A copy of Deposition Exhibit No. 90 (Plaintiff's Trial Exhibit No. 38) (Z003374, Z003375 and Z003906) is attached hereto as Attachment A and a copy of Z003905 is attached hereto as Attachment B. Pursuant to IRE 106, Zilog further objects to any attempt by ASI to introduce Deposition Exhibit No. 90 (Plaintiff's Trial Exhibit No. 38) without including Z003905 because Z003905 in fairness ought to be considered contemporaneously with said exhibit.

**Objection to Plaintiff's Designation 100:11-21:** Zilog incorporates by reference its **Objection to 96:18-25** above. In addition, Zilog objects to ASI's counsel's question at 100:18-20 is misleading because it erroneously states that the authorized site for the software in question is 6800 Santa Teresa Boulevard in San Jose, whereas the signed document itself clearly states that the authorized site for the software in question is 1590 Buckeye Drive, Milpitas.

2. **Witness Name: Charles Steven Darrough**  
**Date of Deposition: February 12, 2014**

**Objection to Plaintiff's Entire Designation.** Zilog objects to all of ASI's designations of the deposition testimony of Charles Steven Darrough if ASI intends to present

such deposition testimony to the jury by way of audiovisual means. At the outset of Mr. Darrough's deposition, undersigned counsel objected that:

MR. HUSCH: If I may, I'd like to make an objection to the deposition being taken by audiovisual means. My objection is based on Rule 30(b)(4)(E), which says that the notice for the taking of an audiovisual deposition must state that the deposition will be recorded by audiovisual means and the deposition notice in this case does not so state.

Attachment C (Deposition of Charles Steve Darrough, 7:20-8:1); Attachment D (Second Amended Notice of Deposition of Defendant Zilog, Inc.).

**Objection to Plaintiff's Designation 64:12-66:5:** Zilog objects to ASI's designation of page 64, line 12, through page 66, line 5, of Mr. Darrough's deposition testimony because such testimony refers to Deposition Exhibit No. 105, which is not listed as a trial exhibit on any party's trial exhibit list.

**Objection to Plaintiff's Designation 65:22-66:5:** Zilog objects to ASI's designation of page 64, line 22, through page 66, line 5, of Mr. Darrough's deposition testimony as irrelevant and inadmissible under IRE 402, because such testimony is solely related to a discovery issue (an unwritten request for production by ASI that was not made in compliance with IRCP 34 and as to which ASI did not follow up) that should not be brought before the jury. Zilog further objects to ASI's designation of page 64, line 22, through page 66, line 5, of Mr. Darrough's deposition testimony as inadmissible pursuant to IRE 403, because any alleged probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay or waste of time.

3. **Witness Name: Richard T. White**  
**Date of Deposition: September 2, 2014**

**Objection to Plaintiff's Designation 25:13-24:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 25:25—26:10 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 27:21 –31:9:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 31:10-32:8 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 32:9-32:17, 32:18—33:2, 33:3—12, 33:13-34:1, and 34:2---34:23:** Zilog objects to these designations on the following basis. First, the designations are incomplete and misstate the testimony given by Zilog's Rule 30(b)(6) designee, David Staab, concerning the alleged conversation between Douglas Hackler and Rick White. Thus, the probative value of these designations is substantially outweighed by the danger misleading the jury and the designations should be excluded pursuant to IRE 403. Second, the designations in contain the needless presentation of cumulative evidence and should be excluded on that ground pursuant to IRE 403. Third, in accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the referenced statements of David Staab contained in the June 9, 2014 deposition transcript of Zilog's 30(b)(6) designee, David R. Staab attached hereto as Attachment E. In that statement

Mr. Staab testified that Mr. White did not believe his conversation with Mr. Hackler involved design services:

Q. [by Mr. Zarian] What, if anything, did Mr. White tell you about the chance encounter that he had on a flight with Mr. Hackler?

A. [by Mr. Staab] He indicated that they -- while he was boarding the plane for his trip to San Jose that Mr. Hackler called out to him from approximately ten rows further back and there was a brief discussion.

Q. [by Mr. Zarian] What is your understanding of the discussion that took place?

A. [by Mr. Staab] At the present time Mr. White couldn't recall the content.

Q. [by Mr. Zarian] And do you have any understanding as you sit here of what the content of the discussion was?

A. [by Mr. Staab] No.

Q. [by Mr. Zarian] To be clear, is it your understanding from your one-hour meeting with Mr. White last Friday that he could not recall the content of his conversation with Mr. Hackler during that chance encounter on a flight?

A. [by Mr. Staab] I'm sorry, could you repeat the question.

Q. [by Mr. Zarian] From your meeting with Mr. White, is it your understanding that Mr. White cannot presently recall the content of his conversation with Mr. Hackler on that flight?

A. [by Mr. Staab] He could not recall any content. *He did add that he didn't believe that it involved design services.*

Q. [by Mr. Zarian] *That what did not involve design services?*

A. [by Mr. Staab] *The conversation.*

*Id.*, 425:24--426:25. (emphasis added). Mr. Staab clearly testified that Mr. White told him that the conversation between Rick White and Doug Hackler "did not involve design services."

Despite this testimony, ASI, during Mr. White's deposition asked a number of misleading and

argumentative questions that misstated the record. Zilog objects to the following questions, on the basis that they misstate Mr. Staab's testimony and mislead the witness:

Q. [by Mr. Zarian] So do you recall having read a question and answer from the transcript that you reviewed in which Mr. Staab testified as follows:

Question: What is your understanding of the discussion that took place?

Answer: [by Mr. Staab] At the present time Mr. White could not recall the content, closed quote?

White Depo., 32:9 --32:15.

Q. [by Mr. Zarian] Okay. Let me ask you about the following: Did you read the following question and answer?

For your meeting with Mr. White, is it your understanding that Mr. White cannot presently recall the content of his conversation with Mr. Hackler on that flight?

Answer -- by Mr. Staab, under oath -- he could not recall any content.

Do you remember that?

*Id.*, 32:18 to 33:1.

Q. [by Mr. Zarian] Let me ask you about another question and answer.

Question: During your meeting with Mr. White last Friday, did he represent to you that he cannot presently recall any content from his brief discussion with Mr. Hackler during a chance encounter on a flight?

Answer: [by Mr. Staab] Again, yes.

*Id.*, 33:3--33:11.

Q. [by Mr. Zarian] Let me read you another question and answer.

Did Mr. White -- Question: Did Mr. White tell you whether he could recall any of the topics or issues or categories discussed with Mr. Hackler during that conversation?

Answer -- by Mr. Staab, under oath, just a few days after your meeting with him -- quote: At the present time he could not recall, closed quote.

*Id.*, 33:13--33:21.

Q. [by Mr. Zarian] So let me ask you one more time, just so the record is clear: As you sit here today, do you understand that Mr. Staab testified under oath, just a few days after he met with you, that you could not recall the content of any conversations with Mr. Hackler in any airport?

*Id.*, 34:2--34:7.

**Objection to Plaintiff's Designation 38:2—38:15:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 38:16—39:3 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 42:2—42:16:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 42:17—43:2 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 47:4—50:6:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified,

introduce the statements contained in 50:7—50:22 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 51:23—57:7:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 57:8—11 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 58:10—59:4:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 59:5—60:4 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 62:2 –65:17:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 65:18—65:20 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 67:2—70:14:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 70:15—71:8 on the basis that these statements out to be in fairness considered contemporaneously with it.



**Objection to Plaintiff's Designation 74:1—74:8:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 71:9—75:2 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 82:14—83:11:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 83:12—83:21 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 85:6—89:15:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 89:16—89:22 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 102:22—103:6:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 103:7—103:14 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 108:7—109:9:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of

Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 107:19—108:6 on the basis that these statements out to be in fairness considered contemporaneously with it.

**Objection to Plaintiff's Designation 120:21—121:22:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 121:23—121:25 contemporaneously with it.

**Objection to Plaintiff's Designation 124:22—127:5:** Zilog objects to this designation as incomplete and misstating the witness's testimony. In accord with Idaho Rule of Evidence 106, Zilog requires that ASI, at the time it introduces the recorded statement identified, introduce the statements contained in 127:7—127:19 on the basis that these statements out to be in fairness considered contemporaneously with it.

**4. Zilog's Counter-designations of September 2, 2014 Deposition Testimony of Richard T. White.**

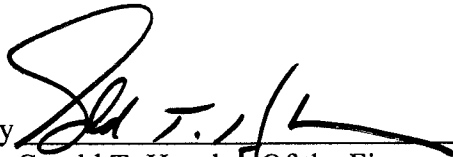
Without waiving its prior objections and invocation of Idaho Rule of Evidence 106, Zilog hereby counter-designates the following testimony of Rick White:

13:5—13:18  
25:25--26:10  
31:10—32:5  
36:8—37:12  
38:16—39:3  
42:17—43:2  
50:7—50:22  
57:8—57:11  
59:8—60:4

61:9—70:1  
65:18—65:20  
70:15—71:8  
71:20—71:23  
74:9—75:2  
83:12—83:21  
89:16—89:22  
103:7—103:14  
107:19—108:6  
116:1—116:24  
117:9—117:13  
127:7—127:19  
129:8—132:13

DATED this 31st day of December, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of December, 2014, I caused a true and correct copy of the foregoing **ZILOG, INC.'S OBJECTIONS AND COUNTER-DESIGNATIONS TO PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S LIST OF DEPOSITION DESIGNATIONS FOR USE AT TRIAL** to be served by the method indicated below, and addressed to the following:

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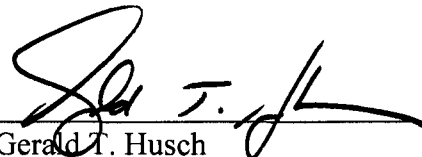
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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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Gerald T. Husch

# **ATTACHMENT A**

# CAST

# CONFIDENTIAL

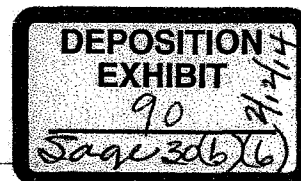
## Evaluation License Agreement

This agreement is between CAST, Inc., a New Jersey corporation with a place of business located at 11 Stonewall Court, Woodcliff Lake, New Jersey 07677, U.S.A. ("LICENSOR"), and Zilog, a corporation whose business address is 6800 Santa Teresa Blvd., San Jose, CA ("LICENSEE").

1. **LICENSE.** LICENSOR hereby grants to LICENSEE and LICENSEE accepts, subject to the terms of this AGREEMENT, a timed, non-exclusive and non-transferable license to evaluate the current version of the software described in Schedule 1, attached hereto ("SOFTWARE").
2. **CONDITIONS ON USE.** The SOFTWARE is for the LICENSEE's own use. LICENSEE shall not sublicense, distribute, rent, lease, time share, copy, or assign the SOFTWARE or documentation without the prior written approval from LICENSOR. LICENSEE has no rights to incorporate SOFTWARE inside an ASIC or Programmable device except for the express purpose of evaluating SOFTWARE for future use. No rights to manufacture devices of any sort are conveyed as apart of this license.
3. **TITLE.** Title to the SOFTWARE and accompanying documentation shall remain with LICENSOR.
4. **TERM.** This AGREEMENT shall commence upon its execution by both LICENSEE and LICENSOR and, unless sooner terminated pursuant to Section 9, shall continue until date described in Schedule 2.
5. **AUTHORIZED SITE.** The SOFTWARE may be used only on computers within the immediate site as specified in Schedule 3.
6. **CONFIDENTIAL INFORMATION.** LICENSEE acknowledges that the SOFTWARE and associated documentation contain confidential and trade secret information of LICENSOR. LICENSEE agrees to treat as confidential and safeguard the SOFTWARE and all permitted copies thereof, and to restrict access thereto to LICENSEE's employees having a need for such access and who have been instructed as to its confidential status and not disclose the SOFTWARE, or any information about its operation, performance, design, or implementation to any other party without written authorization from LICENSOR. LICENSEE's obligation with respect to this Section 6 shall survive any termination of this AGREEMENT.
7. **OWNERSHIP.** LICENSOR represents that the SOFTWARE is the original work of the LICENSOR and its licensors and has good title free and clear of any claim, lien, or other encumbrance to the Products and has the right to grant LICENSEE a license for its use.
8. **DISCLAIMER OF SOFTWARE WARRANTY.** LICENSOR does not warrant that the functions contained in the SOFTWARE will meet LICENSEE's requirements or operate in the combination that may be selected by the LICENSEE, that the operation of the SOFTWARE will be uninterrupted or error free, or that all defects in the SOFTWARE will be corrected. The agents, dealers, and employees of LICENSOR are not authorized to make any modifications to this warranty, or additional warranties binding on LICENSOR about or for this SOFTWARE.

**LICENSOR SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** The stated express warranty is in lieu of all liabilities or obligations of LICENSOR for damages arising out of or in connection with the delivery, use, or performance of the software.

9. **TERMINATION.** LICENSOR may terminate this AGREEMENT upon written notice, effective immediately, if LICENSEE fails to comply with any of the terms and conditions of the AGREEMENT. Upon termination, LICENSEE shall discontinue use of the SOFTWARE and documentation and destroy or return all copies to LICENSOR at LICENSEE's expense.



# CONFIDENTIAL

10. **ENTIRE AGREEMENT.** This document is the entire agreement between LICENSEE and LICENSOR concerning the SOFTWARE. This AGREEMENT shall be governed by the laws of the Commonwealth of New Jersey.

11. **GENERAL**

- (a) If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted.
- (b) The LICENSEE may not assign or sub-license, without the prior written consent of LICENSOR, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part.
- (c) LICENSOR shall have the right to collect from LICENSEE its reasonable expenses incurred in enforcing this Agreement including attorney's fees.
- (d) The waiver or failure of LICENSOR to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

**ACCEPTED BY:**

*CAST, Inc.*

*LICENSEE*

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Schedule 1  
Software Description**

The SOFTWARE is defined as: **USBFS-DEV** netlist and any accompanying documentation.

**Schedule 2  
Term**

This AGREEMENT shall terminate **2** month(s) after its execution.

**Schedule 3  
Authorized Site**

The authorized site is defined as 6800 Santa Teresa Blvd., San Jose, CA

# CONFIDENTIAL

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**ACCEPTED BY:**

CAST, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LICENSEE

By: \_\_\_\_\_

Name: Uri Sasson

Title: President

Date: April 19, 2011

**Schedule 1  
Software Description**

The SOFTWARE is defined as: USBFS-DEV netlist and any accompanying documentation.

**Schedule 2  
Term**

This AGREEMENT shall terminate 2 month(s) after its execution.

**Schedule 3  
Authorized Site**

The authorized site is defined as 1590 Buckeye Drive, Milpitas, CA 95035



CAST, Inc.

2/2

Z003906

001545



# **ATTACHMENT B**

# CAST

# CONFIDENTIAL

## Evaluation License Agreement

This agreement is between CAST, Inc., a New Jersey corporation with a place of business located at 11 Stonewall Court, Woodcliff Lake, New Jersey 07677, U.S.A. ("LICENSOR"), and Zilog, a corporation whose business address is 1590 Buckeye Drive, Milpitas, CA 95035 ("LICENSEE").

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  3. **TITLE.** Title to the SOFTWARE and accompanying documentation shall remain with LICENSOR.
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  7. **OWNERSHIP.** LICENSOR represents that the SOFTWARE is the original work of the LICENSOR and its licensors and has good title free and clear of any claim, lien, or other encumbrance to the Products and has the right to grant LICENSEE a license for its use.
  8. **DISCLAIMER OF SOFTWARE WARRANTY.** LICENSOR does not warrant that the functions contained in the SOFTWARE will meet LICENSEE's requirements or operate in the combination that may be selected by the LICENSEE, that the operation of the SOFTWARE will be uninterrupted or error free, or that all defects in the SOFTWARE will be corrected. The agents, dealers, and employees of LICENSOR are not authorized to make any modifications to this warranty, or additional warranties binding on LICENSOR about or for this SOFTWARE.
- LICENSOR SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** The stated express warranty is in lieu of all liabilities or obligations of LICENSOR for damages arising out of or in connection with the delivery, use, or performance of the software.
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# **ATTACHMENT C**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an )

Idaho corporation, ) Case No. CV OC 1123344

Plaintiff, )

vs. ) VIDEOTAPED RULE 30(b)(6)

SAGE SILICON SOLUTIONS, LLC, an ) DEPOSITION OF ZILOG, INC.

Idaho corporation; ZILOG, INC., ) TESTIMONY OF

a Delaware corporation; DAVID ) CHARLES STEVEN DARROUGH

ROBERTS, GYLE YEARSLEY, WILLIAM ) TAKEN FEBRUARY 12, 2014

TIFFANY, and Defendants DOES )

I-X, )

Defendants. ) VOLUME I

\_\_\_\_\_ ) (Pages 1 through 72)

RELATED COUNTER ACTIONS )

\_\_\_\_\_ )

REPORTED BY:

SHERI FOOTE, CSR No. 90, RPR, CRR

Notary Public

11:04:19 1 MR. ZARIAN: No.

11:04:20 2 THE VIDEOGRAPHER: Could you please swear the  
11:04:22 3 witness.

4 CHARLES STEVEN DARROUGH,  
5 first duly sworn to tell the truth relating to said  
6 cause, testified as follows:

7 EXAMINATION

8 QUESTIONS BY MR. ZARIAN:

11:04:36 9 Q. Good morning, Mr. Darrough.

11:04:37 10 A. Good morning.

11:04:38 11 Q. Have you -- well, let me ask you first to  
11:04:41 12 state your full name for the record.

11:04:43 13 A. Charles Steven Darrough.

11:04:44 14 Q. And would you spell --

11:04:44 15 MR. HUSCH: Before we go any further, John --

11:04:46 16 MR. ZARIAN: I'm just asking him to spell his  
11:04:48 17 last name.

11:04:49 18 THE WITNESS: D-a-r-r-o-u-g-h.

11:04:51 19 MR. ZARIAN: Yes, go ahead, Gerry.

11:04:52 20 MR. HUSCH: If I may, I'd like to make an  
11:04:54 21 objection to the deposition being taken by audiovisual  
11:04:57 22 means. My objection is based on Rule 30(b)(4)(E), which  
11:05:02 23 says that the notice for the taking of an audiovisual  
11:05:06 24 deposition must state that the deposition will be  
11:05:10 25 recorded by audiovisual means and the deposition notice

11:05:13 1 in this case does not so state.

11:05:15 2 MR. ZARIAN: Okay. Anything else?

11:05:18 3 MR. HUSCH: I will have a clarification on my  
11:05:22 4 amended notice of designation, a further amendment of  
11:05:26 5 that that will affect this witness. And I guess I can  
11:05:30 6 state it now: That No. 19, I erroneously designated  
11:05:36 7 Steve Darrough, the witness, as the representative on  
11:05:39 8 topic No. 19 and I should have designated David Staab.  
11:05:44 9 Mr. Staab will testify about topic No. 19.

11:05:48 10 MR. ZARIAN: And that's "Communications with  
11:05:50 11 Sage and/or the Individuals regarding this litigation or  
11:05:53 12 the subject matter of this litigation"?

11:05:55 13 MR. HUSCH: I'm sorry? Oh, topic 19?

11:05:57 14 MR. ZARIAN: Topic 19.

11:06:00 15 MR. HUSCH: Yes.

11:06:02 16 MR. ZARIAN: That actually makes more sense.  
11:06:04 17 So, thank you. And Mr. Darrough is being designated  
11:06:11 18 for topics 1, 18, and 22; is that correct?

11:06:16 19 MR. HUSCH: He's being designated for topic  
11:06:17 20 No. 1, topic No. 18, and topic No. 22; correct.

11:06:27 21 MR. ZARIAN: All right. As long as we're  
11:06:28 22 engaging in preliminaries, there has also been a  
11:06:32 23 production of documents just before the deposition which  
11:06:37 24 I'm having marked -- or copied rather and we can mark as  
11:06:39 25 an exhibit. But I did receive that production, Gerry.

# **ATTACHMENT D**

John N. Zarian, ISB #7390  
Kennedy K. Luvai, ISB#9924  
PARSONS BEHLER & LATIMER  
960 Broadway Avenue, Suite 250  
Boise, Idaho 83706  
Telephone: 208.562.4900  
Facsimile: 208.562.4901  
jzarian@parsonsbchle.com  
kluvai@parsonsbchle.com

Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY,  
and Defendants DOES I-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 112334

*The Honorable Thomas J. Neville*

**SECOND AMENDED NOTICE OF  
RULE 30(b)(6) DEPOSITION OF  
DEFENDANT ZILOG, INC.**

**SECOND AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC.**

4814-0844-0439 1

001553



PLEASE TAKE NOTICE that, pursuant to Idaho Rule of Civil Procedure 30(b)(6) ("Rule 30(b)(6)"), plaintiff, American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, will take the deposition upon oral examination of defendant Zilog, Inc. ("Zilog"), through one or more of its officers, directors, managing agents, employees, or other persons designated to testify on its behalf, with respect to each of the subject matters listed below.

This deposition will take place under oath and before a duly authorized notary public, or other person authorized by law to administer oaths. The deposition will be recorded by stenographic means by a court reporter and may be recorded by audio and visual means by a videographer. The deposition will begin at 9:00 a.m. on Wednesday, February 12, 2014 at the offices of Parsons, Behle & Latimer, PLC located at 800 W Main Street, Suite 1300, Boise, Idaho 83702 and shall continue from day to day thereafter until concluded. Zilog is requested to produce the witness or witnesses at the indicated time and place and all parties and counsel of record are invited to attend and ask questions.

ASI requests that, at least five (5) business days prior to the noticed deposition and pursuant to Rule 30(b)(6), Zilog provide counsel for ASI with a written designation of the names and positions of all officers, directors, managing agents, employees, or other persons designated to testify on its behalf with respect to each of the subject matters listed below and to specify as to which matters each person so designated will testify.

ASI reserves the right to supplement this deposition notice to set forth additional areas of testimony.

**SECOND AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC. - 1**

4814-0844-1439 1

001554

**DEPOSITION TOPICS**

1. Zilog's corporate structure, business model and operations.
2. Solicitation or acceptance of design or related services offered by Sage Silicon Solutions, LLC ("Sage") and/or David Roberts, Gyle Yearsley, Russell Lloyd, William Tiffany and Evelyn Perryman (the "Individuals") at any time.
3. Relationships with Sage and the Individuals.
4. Access by Sage and Individuals to Zilog's physical facilities and/or computing assets in connection with their provision of design and related services to Zilog.
5. Communications with regarding Sage and Individuals' provision of design or related services to Zilog.
6. Solicitation or acceptance of design or related services offered by ASI at any time.
7. Solicitation or acceptance of design or related services offered by third party providers including, without limitation, the Embedded Resource Group, Inc..
8. Relationship with Rick White.
9. Communications regarding ASI and/or its proprietary technologies, intellectual property or trade secrets including, without limitation, communications occurring or which occurred between Zilog and Lattice Semiconductor.
10. Knowledge of the Individuals' relationships, employment or otherwise, with ASI.
11. Negotiations or discussions with Sage and/or the Individuals in connection with their provision of design and related services to Zilog.
12. Use of ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

**SECOND AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC. - 2**

4814.0844-1439.1

13. Benefits derived from use of ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

14. Products or services incorporating design and related services provided to Zilog by Sage and/or the Individuals.

15. Use of non-ASI proprietary technologies, intellectual property, trade secrets or other similar intangible assets as part of products or services that incorporate design and related services provided to Zilog by Sage and/or the Individuals.

16. Harm or damage sustained by ASI as a result of Zilog's ASI's proprietary technologies, intellectual property, trade secrets or other similar intangible assets in apparent furtherance of Zilog's business objectives.

17. Payments made to Sage and/or the Individuals for design or related services provided to Zilog.

18. Marketing or promotion of any products or services incorporating design or related services provided to Zilog by Sage and/or the Individuals.

19. Communications with Sage and/or the Individuals regarding this litigation or the subject matter of this litigation.

20. Communications with third parties concerning this litigation or the subject matter of this litigation.

21. Investigations conducted in connection with any allegations or factual assertions made by Zilog in this litigation.

22. Lawsuits in which Zilog has been name or participated as a party.

**SECOND AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC. - 3**

1814-0844-4439.1

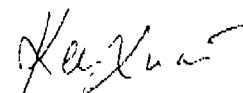
23. Efforts to locate, review and produce records responsive to ASI's discovery requests.

24. Record retention and storage policies or practices including, but not limited to, electronic or hard copy archiving.

DATED THIS 14th day of January, 2014.

PARSONS BEHLE & LATIMER

By



Kennedy K. Luvai  
Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

SECOND AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC. - 4

1814-0844-4439 1

001557

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of January, 2014, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182

*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
Email: gary@cooper-larsen.com  
barbie@cooper-larsen.com

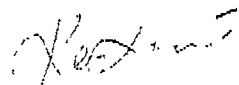
Russell G. Metcalf  
METCALF LAW OFFICE, PLLC  
P.O. Box 385  
Homedale, ID 83628  
Telephone: (208) 337-4945  
Facsimile: (208) 337-4854

*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
Email: rmetcalf@cablecone.net

Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
*Attorneys for Defendant Zilog, Inc.*

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☒ Facsimile  
Email: srt@moffatt.com  
gth@moffatt.com

  
Kennedy K. Luvai

SECOND AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION  
OF DEFENDANT ZILOG, INC. - 5

# **ATTACHMENT E**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an )

Idaho corporation, ) Case No. CV OC 1123344

Plaintiff, )

vs. ) CONTINUED VIDEOTAPED RULE

SAGE SILICON SOLUTIONS, LLC, an ) 30(b)(6) DEPOSITION

Idaho corporation; ZILOG, INC., ) OF ZILOG, INC.

a Delaware corporation; DAVID ) TESTIMONY OF DAVID R. STAAB

ROBERTS, GYLE YEARSLEY, WILLIAM ) TAKEN JUNE 9, 2014

TIFFANY, and Defendants DOES )

I-X, )

Defendants. ) VOLUME V

\_\_\_\_\_ ) (Pages 402 through 558)

RELATED COUNTER ACTIONS )

\_\_\_\_\_ )

REPORTED BY:

SHERI FOOTE, CSR No. 90, RPR, CRR

Notary Public

09:36:34 1 communication that included Rick's -- I believe there  
09:36:38 2 was a -- sorry. I believe there was a check of  
09:36:44 3 communications from Rick to the company.

09:36:47 4 Q. But do you know as you sit here whether or not  
09:36:50 5 Mr. White's name was a search term in any search for  
09:36:54 6 documents?

09:36:54 7 A. I think so, but again I'm not 100 percent  
09:36:57 8 certain.

09:36:57 9 Q. To your knowledge -- well, let me ask you, to  
09:37:01 10 your recollection have you participated in any efforts  
09:37:03 11 to search for documents relating to the chance encounter  
09:37:08 12 on a flight between Mr. White and Mr. Hackler?

09:37:11 13 A. No.

09:37:11 14 Q. To your knowledge has anyone else at Zilog  
09:37:14 15 searched for any such communications?

09:37:17 16 A. Again, I'm not 100 percent certain.

09:37:19 17 Q. All right. Is it the same answer, that you  
09:37:22 18 believe it may have been a search term, that is  
09:37:25 19 Mr. White's name?

09:37:26 20 A. Correct.

09:37:27 21 Q. But do you know for sure as you sit here one  
09:37:31 22 way or the other if it was in fact a search term?

09:37:35 23 A. Again, no, I do not.

09:37:37 24 Q. What, if anything, did Mr. White tell you  
09:37:39 25 about the chance encounter that he had on a flight with



09:37:42 1 **Mr. Hackler?**

09:37:45 2 **A. He indicated that they -- while he was**  
09:37:50 3 **boarding the plane for his trip to San Jose that**  
09:37:57 4 **Mr. Hackler called out to him from approximately ten**  
09:38:02 5 **rows further back and there was a brief discussion.**

09:38:10 6 **Q. What is your understanding of the discussion**  
09:38:11 7 **that took place?**

09:38:13 8 **A. At the present time Mr. White couldn't recall**  
09:38:16 9 **the content.**

09:38:18 10 **Q. And do you have any understanding as you sit**  
09:38:23 11 **here of what the content of the discussion was?**

09:38:26 12 **A. No.**

09:38:29 13 **Q. To be clear, is it your understanding from**  
09:38:30 14 **your one-hour meeting with Mr. White last Friday that he**  
09:38:35 15 **could not recall the content of his conversation with**  
09:38:41 16 **Mr. Hackler during that chance encounter on a flight?**

09:38:45 17 **A. I'm sorry, could you repeat the question.**

09:38:46 18 **Q. From your meeting with Mr. White, is it your**  
09:38:50 19 **understanding that Mr. White cannot presently recall the**  
09:38:53 20 **content of his conversation with Mr. Hackler on that**  
09:38:56 21 **flight?**

09:38:59 22 **A. He could not recall any content. He did add**  
09:39:07 23 **that he didn't believe that it involved design services.**

09:39:16 24 **Q. That what did not involve design services?**

09:39:20 25 **A. The conversation.**

Neville Court  
1/15/15

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_  
FILED \_\_\_\_\_  
P.M. \_\_\_\_\_  
151

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
Andrea J. Rosholt, ISB No. 8895  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
Post Office Box 829  
Boise, Idaho 83701  
Telephone (208) 345-2000  
Facsimile (208) 385-5384  
srt@moffatt.com  
gth@moffatt.com  
25332.0000

JAN 02 2015

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S TRIAL BRIEF**

## **I. INTRODUCTION**

COMES NOW the defendant, Zilog, Inc. ("Zilog"), by and through undersigned counsel, and submits this Trial Brief.

## **II. STATEMENT OF THE PARTIES' CLAIMS AND DEFENSES**

### **A. Plaintiff's Claims.**

On July 2, 2013, American Semiconductor, Inc. ("ASI") filed its Second Amended Complaint and Demand for Jury Trial ("Second Amended Complaint") against (a) Sage Silicon Solutions, LLC ("Sage"); (b) Zilog, Inc. ("Zilog"); and (c) three (3) individuals—David Roberts, Gyle Yearsley and William Tiffany—referred to as the "Individual Defendants." As to Zilog, ASI is only proceeding to trial on claims of tortious interference with prospective economic advantage and contract against Zilog (Fifth Cause of Action). In its claim for tortious interference with contract, ASI pled:

¶ 88. Zilog was aware of the existence of the Employee Confidentiality Agreements between the Individuals and American Semiconductor.

¶ 89. Zilog tortiously interfered with the Employee Confidentiality Agreements by soliciting or accepting design services from the Individuals in violation of the Individuals' respective contractual obligations to American Semiconductor under the Employee Confidentiality Agreements.

Separately, in support of ASI's claim for tortious interference with prospective economic expectancy, ASI pled:

¶ 90. In addition, by soliciting or accepting services from the Individuals and Sage, Zilog tortiously interfered with American Semiconductor's prospective economic advantage, including depriving American Semiconductor of the opportunities to earn income from the Individuals' design services.

¶ 91. Zilog was aware that American Semiconductor had, in the past, sought to provide services to third parties, and would, in the future, continue to seek to provide such services.

¶ 92. In addition, Zilog was necessarily aware that its solicitation or acceptance of the services of the Individuals and Sage would, and did, interfere with American Semiconductor's provision of services to third parties.

¶ 93. American Semiconductor has been damaged by the foregoing conduct, and damages were directly and proximately caused by Zilog's tortious interference.

**B. Zilog's Defenses.**

As to ASI's claim for tortious interference with contract, Zilog denies that at the time it contracted with Sage, it had knowledge that the Individual members of Sage were employees of ASI subject to Employee Confidentiality Agreements. Zilog further denies that it intentionally interfered with ASI's Employee Confidentiality Agreements or caused a breach of any of those agreements. Finally, Zilog denies that it caused any damage to ASI.

As to ASI's claim for tortious interference with prospective economic advantage, Zilog denies that it is a third party to any prospective economic advantage that ASI had with Zilog, denies that ASI had a prospective economic expectancy of performing services for Zilog, denies that Zilog knowingly or intentionally interfered with any prospective economic expectancy between ASI and the Individual Defendants, and denies that Zilog caused any damages to ASI.

**III. BACKGROUND**

**A. The Individuals' Employment at Zilog.**

For several years, Dave Roberts, Gyle Yearsley, William Tiffany, Russell Lloyd and Evelyn Perryman (the "Individuals") were members of an engineering design team for Zilog that ultimately reported to David Staab, who is currently Zilog's VP in charge of Research & Development, as well as Microcontroller Architecture.<sup>1</sup>

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<sup>1</sup> Mr. Staab has at all times resided and worked out of the Silicon Valley in California.

In January 2009, Zilog was forced to lay off its design team, including Roberts, Yearsley, Tiffany, Lloyd and Perryman, and a significant number of other Zilog employees, for economic reasons. At about the same time, in early 2009, Zilog sold a number of its product lines to a company called Maxim Integrated Products. Gyle Yearsley and William Tiffany were able to find work at Maxim for a brief period. Eventually the members of the “team” all found themselves unemployed.

Following Zilog’s layoffs in 2009, the employees remaining in the Meridian, Idaho, facility were all involved in production and failure analysis relating to microcontroller products already on the market. None of the Zilog employees in the Meridian, Idaho, facility had any role or responsibility with regard to new product “design.”

**B. The Individuals Form a Joint Venture that Becomes Sage Silicon Solutions.**

Following the layoffs, Roberts, Yearsley, Tiffany, Lloyd and Perryman considered forming a company for the purpose of contracting work for companies in the semiconductor industry. As part of their desire to form a company, Dave Roberts reached out to his old boss, David Staab.

In March 2009, *before* the Individuals were employed or otherwise associated with ASI, Dave Roberts informed Mr. Staab by e-mail that “[t]he team and I have started discussing seriously about starting a company.” In May of that same year, Dave Roberts again wrote to David Staab in an e-mail where he informed David Staab that the team was making progress on starting a company and wanted to approach Zilog about equipment in Meridian that Zilog was no longer using.

In June of 2009, David Staab sent David Roberts an e-mail asking how his venture was coming. In response, Dave Roberts told Mr. Staab that he was working “with a

local foundry company that Dale Wilson went to, American Semiconductor.” Mr. Roberts explained ASI’s process and inquired whether Zilog would be interested in ASI’s process. David Staab responded by indicating that Zilog was not interested in ASI’s process. However, Mr. Staab did indicate that he would contact Dave Roberts if he needed design services in the future.

Thereafter, in October of 2009, Dave Roberts informed Mr. Staab that he, Yearsley, Tiffany and Lloyd had started their company, Sage Silicon Solutions, and that they were “not limited to using American Semiconductor,” and could “help you when you need design work.” In response, Staab congratulated Roberts on establishing his company and Staab told Dave Roberts that he would certainly consider him when there was any design work to quote.

At the time of these communications between Dave Roberts and David Staab, ASI had neither hired the Individuals as employees nor entered into the Employee Confidentiality Agreements that are at issue.

Thereafter, in an e-mail of December 7, 2009, Roberts also told Staab:

We are getting some action here working with American Semiconductor . . . . We are also working on our website, [www.sagesiliconsolutions.com](http://www.sagesiliconsolutions.com). . . . If you survive at Ixys and need some design work done, let me know, we’ll be happy to help you with design services.

Sage’s website represented that Sage was working “[i]n cooperation with American Semiconductor, Inc., we offer a portfolio of IP that is silicon proven.” Second Amended Complaint, ¶ 27.

Shortly thereafter, and unbeknownst to Zilog, Roberts, Yearsley, Tiffany, Lloyd and Perryman each became employees of ASI and each signed an Employment Confidentiality Agreement ("ECA").

**C. Zilog Contracts with Sage Silicon Solutions.**

In late 2009, early 2010, Zilog (which had been recently acquired by IXYS, a semiconductor company headquartered in Milpitas, California) began putting together a team to develop a new generation of Zilog's Z8 microcontroller series. The members of Sage had actually worked on the predecessor microcontroller while working at Zilog. In November 2010, David Staab e-mailed David Roberts that "There is a possibility of some Zilog uC [microcontroller] design work being available for outsource near future. *Alternatively, internal, parent company resources may be used.*" Mr. Staab further inquired, "Would your team have interest/availability? Who do you have, is it Gyle, Bill, and Russ?" Mr. Staab requested that if Roberts was interested, he provide a quote.

Dave Roberts responded that same day by e-mail, stating he had himself, Gyle Yearsley, Bill Tiffany and Russ Lloyd, as well as Evelyn Perryman, if Staab needed layout. He quoted a rate of \$72.00 per hour and said they were "available now." Zilog and Sage eventually settled on \$65.00 per hour for the engineers and \$45.00 per hour for Perryman's layout work, and Sage used Zilog's CAD tools.

Thereafter, on January 13, 2011, Staab e-mailed Roberts, stating that "[t]he time to outsource Zilog [microcontroller] design work is approaching. This would supplement internal resources from IXYS [i.e., Clare] that are already deployed."

On February 15, 2011, Zilog retained Sage as an independent contractor to work on a project that is called the Z8F6480 or 82. Sage and Zilog executed a Zilog Independent

Contractor Services Agreement (“ZICSA”). In entering into the ZICSA, Sage warranted that it was not a party to any other agreement that would interfere with Sage’s full compliance with the ZICSA.

Sage worked on the Zilog project for approximately seven or eight months, performing engineering services, including verification and layout, and participating in weekly development team meeting minutes. On September 22, 2011, Mr. Hackler had lunch with a Zilog employee who told him that the some or all of the Individuals had been providing services to Zilog. Following an investigation conducted by ASI, ASI fired Roberts, Yearsley and Tiffany, but not Lloyd. Thereafter, on September 27, 2011, ASI sent a demand letter to Zilog, telling Zilog that what the team was doing violated their ECAs and Zilog should stop working with them.

At ASI’s demand, Zilog terminated its contract with Sage. Although ASI offered to complete work on the project for ASI, Zilog did not retain ASI. Instead, Zilog used its internal resources to complete the project.

#### **IV. ANALYSIS**

##### **A. Zilog Is Not Liable for Tortious Interference with Contract.**

In its Second Amended Complaint, ASI argued that “Zilog was aware of the existence of the Employee Confidentiality Agreements between the Individuals and American Semiconductor” and that “Zilog tortiously interfered with the Employee Confidentiality Agreements by soliciting or accepting design services from the Individuals in violation of the Individuals’ respective contractual obligations to American Semiconductor under the Employee Confidentiality Agreements.” Second Amended Complaint, ¶¶ 88 & 89. To establish a claim



for tortious interference with contract (here the Employee Confidentiality Agreements), ASI must prove each of the following elements:

- (1) the existence of a contract
- (2) knowledge *of the contract* on the part of the Defendant;
- (3) intentional interference *causing* a breach of the contract; and
- (4) injury to the plaintiff resulting from breach.

*Wesco Autobody Supply, Inc. v. Ernest*, 149 Idaho 881, 243 P.3d 1069 (2010), citing *Bybee v. Isaac*, 145 Idaho 251, 259, 178 P.3d 616, 624 (2008) (emphasis added). “[ASI] must establish these elements before the burden switches to [Zilog] to explain the interference with the contracts. *Nw. Bec-Corp v. Home Living Serv.*, 136 Idaho 835, 841, 41 P.3d 263, 269 (2002).

In this case, ASI asserts that Zilog intentionally interfered with the Individuals’ contractual duty not to compete, causing damage. As provided herein, this claim must fail.

**1. There is no evidence that Zilog knew that the Individual members of Sage had entered into employment contracts with ASI.**

Zilog cannot be liable for tortious interference with the employee confidentiality agreements existing between the Individual Defendants and ASI because Zilog had no knowledge of the agreements *at the time* Zilog contracted or worked with Sage. In assessing a tortious interference claim, Idaho, like a number of jurisdictions, relies upon Section 766 of the Restatement (Second) of Torts. *See Highland Enter., Inc. v. Barker*, 133 Idaho 330, 339, 986 P.2d 996, 1005 (1999), *citing with approval* RESTATEMENT (SECOND) OF TORTS § 766 cmt. i (1977). Comment i to Section 766 provides in pertinent part as follows:

- i. Actor’s knowledge of other’s contract.* To be subject to liability under the rule stated in this Section, ***the actor must have knowledge of the contract with which he is interfering and of the fact that he is interfering with the performance of the contract.*** Although the actor’s conduct is in fact the cause of another’s

failure to perform a contract, *the actor does not induce or otherwise intentionally cause that failure if he has no knowledge of the contract.* . . .

RESTATEMENT (SECOND) OF TORTS § 766, cmt. [i] (bold italics added).

In the case at bar, there is no evidence that Zilog had actual knowledge of any of the ECAs between ASI and the Individuals when Zilog contracted or worked with Sage. Nor is there any evidence that Zilog had actual knowledge that it was, as ASI has alleged, interfering in the Individuals' performance of their ECAs when Zilog retained Sage or utilized Sage's services.

In fact, Zilog reasonably believed that it could lawfully contract with Sage to receive its services. In entering into the ZICSA, Sage warranted that Sage "has sufficient ownership interest(s) or rights to use all Prior Intellectual Property Rights needed for it to perform the Services and its obligations under this Agreement, and has the authority to do so without infringing the rights of any third party . . . ." In entering into the ZICSA, Sage also warranted that it was not a party to any other agreement that would interfere with Sage's full compliance with the ZICSA.

**2. The law does not impute knowledge to Zilog from employees who obtain information outside the scope of their employment.**

ASI argues that because employees of Zilog knew that the Individuals were "working with" ASI in some capacity, Zilog knew or should have known that the Individuals were full-time employees of ASI, subject to the ECAs.<sup>2</sup> In addition to this argument being too

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<sup>2</sup> ASI's CEO, Douglas Hackler, claims that during conversations in an airplane or airport in late 2009 or early 2010, he told Rick White, then a high-ranking Zilog employee, that ASI had hired Roberts, Yearsley, Tiffany and Lloyd and that they could provide design services to Zilog through ASI, and that White told him Staab had said ASI would be a good design resource for Zilog. Rick White (who is no longer employed with Zilog) denies that he and Mr. Hackler discussed the Individuals or design services.

attenuated to charge Zilog with knowledge of the ECAs, the law is clear that a corporation—here Zilog—is only charged with knowledge of information obtained by an employee if the information is acquired within the scope of the employee’s employment and duties to the corporation.

It is well settled that the knowledge of an agent may be imputed to the principal only if the information is relevant to the agent’s duties. *See* RESTATEMENT (SECOND) OF AGENCY § 268 cmt. C (“The principal is not bound by a notification directed towards an agent whose duties or apparent duties have no connection with the subject matter to which the notification relates.”). “The reason for this rule is that it would be unreasonable to impute knowledge to an employer from an employee who would not likely pass such knowledge along.” *Roderick Timber Co. v. Willapa Harbor Cedar Prods.*, 627 P.2d 1352, 1358 (Wash. App. 1981); *see, e.g., Claris v. Oregon Short Line R.R. Co.*, 56 Idaho 169 (1935) (a corporation or other employer is not charged with notice of that knowledge which an employee acquires outside of the scope of his employment).

A good synopsis of the law with respect to knowledge acquired within the scope of an agent or officer’s duties is found in *Installation Services, Inc. v. Electronics Research, Inc.*, Case No. 04 C 6906, at \*6 (N.D. Ill. 2005). *Installation Services* provides, in part:

An agent’s knowledge is imputed to his principal if the knowledge concerns a matter within the scope of an agent’s authority and was acquired in the scope of his duties. *See Bryant v. Livigni*, 250 Ill. App. 3d 303, 308, 619 N.E.2d 550, 555 (1993). “[F]or knowledge to be imputed, the agent must have not just a duty in relation to the subject matter, but a duty to speak to his principal about the specific item of knowledge.” *Evanston Bank v. Conticommodity Svcs., Inc.*, 623 F. Supp. 1014, 1035 (N.D. Ill. 1985) (citing Restatement (Second) Agency § 275 cmt. c). This is a question of fact “which takes into account the nature of the information, the circumstances in which the agent received it, and the agent’s position in the corporate hierarchy.” *Id.* at 1034.

*Id.* (emphasis added). The same rationale was applied in *AIG Global Securities Lending v. Bank of America Securities, LLC*, to limit discovery in a securities fraud case to specific employees who made the investment decisions at issue. No. 01-CIV-11448 (JGK) (HBP), 2006 WL 1206333, at \*2-3 (S.D.N.Y. 2006). In limiting the scope of discovery to information known only to those employees involved in the transactions, the court cited the following comment from the Restatement:

The principal is bound only by the agent's knowledge which appears to be important in view of the agent's duties and prior knowledge. ***The principal is not affected by information acquired by an agent which seems irrelevant to him because he does not know that the principal or another agent of the principal is transacting business in which such knowledge is relevant....***

*Id.*, at \*2 (quoting RESTATEMENT (SECOND) OF AGENCY § 275, cmt. 'D').

Evidence tending to show that certain Zilog employees knew during the relevant time that the Individual Defendants worked at ASI in some capacity is irrelevant because ASI cannot establish that these employees were under a duty to communicate this information to their employer. Pursuant to Idaho Rule of Evidence 104(b), when the relevancy of evidence depends on the fulfillment of a condition of fact, the court may require that the condition be satisfied before allowing the evidence to be introduced. If the condition cannot be satisfied, the court may exclude the evidence.

In this case, Zilog anticipates that ASI will offer evidence that various employees remaining in Zilog's Meridian, Idaho office knew that the Individual Defendants worked at ASI during the relevant time in an attempt to prove that Zilog was chargeable with such knowledge. These individuals have all testified that they did not know whether or not the Individuals were employees of ASI or independent contractors. This fact aside, information given to an

employee, who didn't report to David Staab or anyone on the team for the design of the project, is relevant for this purpose only if ASI can establish that the employee was under a duty to communicate that information to his or her employer. RESTATEMENT (SECOND) OF AGENCY § 275. Since ASI cannot establish that any Zilog employee had a duty to share his knowledge, if any, evidence of his or her knowledge is irrelevant and inadmissible under Rules 104(b) and 402.

**3. There is no evidence that Zilog engaged in conduct *substantially certain* to interfere with the noncompete agreement.**

Separately, ASI is required to prove, and the jury to find, "an intentional interference *causing the breach of the contract . . .*" *Idaho First Nat'l Bank v. Bliss Valley Foods*, 121 Idaho 226, 284, 824 P.2d 841 (1991), citing *Barlow v. Int'l Harvester Co.*, 95 Idaho 881, 522 P.2d 1102 (1974). Intent may be demonstrated if it is shown that the actor desires to bring about the interference, or "knows that the interference is certain or substantially certain to occur as a result of his action." *Id.* at 340, 986 P.2d at 1006 (quoting RESTATEMENT (SECOND) OF TORTS § 766 cmt. d (1977)).

In *Insurance Associates Corp. v. Hansen*, the Idaho Supreme Court held there was support to find lack of intentional interference with a noncompete when the subsequent employer went to some lengths to ensure its noninterference. *Id.*, 116 Idaho 948, 952, 782 P.2d 1230, 1234 (1989). In that case, the employer told the employee not to contact certain customers and further advised the employee not to breach the agreement. *Id.* The court concluded that "[t]here is evidence in the record to support the trial court's finding that [employer] did not intentionally interfere with the [] employment agreement – evidence which, if believed by the trial court, demonstrates [employer] made a bona fide good faith effort to ensure no interference would result." *Id.*

Similarly, here there is no evidence that Zilog intended that the Individuals, in performing services through Sage, breach their employment contracts with ASI. When Zilog contracted with Sage, Sage and Zilog executed the ZICSA wherein Sage contractually agreed that it was not a party to any other agreement that would interfere with Sage's full compliance with the ZICSA.

In entering into the ZICSA, Zilog ensured, and Sage warranted, that Sage "has sufficient ownership interest(s) or rights to use all Prior Intellectual Property Rights needed for it to perform the Services and its obligations under this Agreement, and has the authority to do so without infringing the rights of any third party . . . ." In addition, when asked to disclose any pre-Zilog inventions, Sage responded "none." Furthermore, Sage, as an independent contractor, promised Zilog in the ZICSA as follows:

No Violation of Rights of Third Parties. In Contractor's engagement with Zilog, Contractor will not: (a) breach any nondisclosure or nonuse obligation with respect to any third party's (including any former employer's) confidential or proprietary information, acquired by Contractor prior to Contractor's engagement with Zilog; or (b) without written authorization of the third party, disclose to Zilog, or induce Zilog to use, any confidential or proprietary information belonging to such third party. Contractor is not a party to any other agreement which will interfere with Contractor's full compliance with this Agreement. . . .

Like the defendant in *Hansen*, Zilog made a bona fide good effort in contracting with Sage to ensure that Sage did not violate agreements with any third party—including ASI.

**B. Zilog Did Not Intentionally Interfere with ASI's Prospective Economic Expectancy.**

In its Second Amended Complaint, ASI argues that it had a valid economic expectancy of "the opportunity to earn income from the Individual's design services." Second Amended Complaint, ¶ 90. ASI claims "Zilog was necessarily aware that its solicitation or

acceptance of the services of the Individuals and Sage would, and did, interfere with American Semiconductor's provision of services to third parties." *Id.*, ¶ 92. In order to establish a claim for intentional interference with a prospective economic advantage, ASI has the burden of proving the following elements:

- (1) the existence of a valid economic expectancy,
- (2) knowledge of the expectancy on the part of the interferer,
- (3) intentional interference inducing termination of the expectancy,
- (4) the interference was wrongful by some measure beyond the fact of the interference itself, and
- (5) resulting damage to the plaintiff whose expectancy has been disrupted.

*Syringa Networks, LLC v. Idaho Dep't of Admin.*, 155 Idaho 55, 64, 305 P.3d 499, 508 (2013), citing *Cantwell v. City of Boise*, 146 Idaho 127, 138, 191 P.3d 205, 216 (2008).

**1. The only economic expectancy is the expectancy of earning income from the Zilog project.**

The only "opportunity to earn income from the Individuals' design services" that ASI has claimed Zilog interfered with, is the income associated with the Individuals' performance of design services through Sage to Zilog. In Idaho, like many jurisdictions, the tortious interference with a prospective economic relationship *must be directed against defendants who are not parties to the relationship*. See e.g., *Cantwell v. City of Boise*, 146 Idaho 127, 138, 191 P.3d 205, 216 (2008); see also *Printing Mart v. Sharp Elecs.*, 116 N.J. 739, 752, 563 A.2d 31, 38 (1989) ("Tortious interference developed under common law to protect parties to an existing or prospective contractual relationship from *outside* interference") (emphasis added); *Princess House, Inc. v. Lindsey*, 918 F. Supp. 1356 (W.D. Mo. 1994), *aff'd*, 77 F.3d 486 (8th Cir. 1996) ("There is no liability for interference with prospective business advantage unless

defendant interferes with a relationship between two other parties, that is, defendant cannot be liable for ‘interfering’ with his own prospective relationships.”).

**2. ASI did not have a valid economic expectancy of doing business with Zilog.**

Separately, ASI cannot prove that it had a valid economic expectancy of doing business with Zilog. “A prospective contractual relation is something less than a contractual right, something more than a mere hope.” *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 209, 412 A.2d 466, 471 (1980); *see also Citylink Grp., Ltd. v. Hyatt Corp.*, 313 Ill. App. 3d 829, 840, 729 N.E.2d 869, 877 (2000) (claim of tortious interference with prospective business relations requires proof the plaintiff has a “reasonable expectation of entering into a valid business relationship”).

In this case, ASI’s prospective economic advantage or contractual relation with Zilog is nothing more than a “mere hope.” As provided herein, even before the Individuals were employed at ASI, Dave Roberts offered ASI’s services and process to Zilog, and Zilog responded that it did not want to go in the direction ASI wanted to go. There is no evidence that ASI ever submitted to Zilog a quote or bid for the work done by Sage. Instead, according to ASI’s proposed but undelivered quote, which was prepared for this litigation, ASI alleges that it would have charged Zilog over \$238 per hour for design engineering services. Mr. Staab has testified that if he had received a quote or bid from ASI to perform design engineering services at the rate of \$238 per hour, Staab would not have retained ASI to provide Zilog with any such services (or other services provided by Sage) because ASI’s hourly rate of \$238 was too high a rate to have been acceptable.

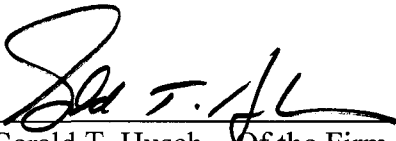


3. **ASI cannot prove that Zilog had an improper objective or motive in hiring Sage.**

The tort of wrongful interference with economic relationship requires a showing that “intentional interference with a prospective economic advantage result[ed] in injury to the plaintiff [and] *is wrongful by some measure beyond the fact of the interference itself.*” *Idaho First Nat’l Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 286, 824 P.2d 841, 861 (1991) (emphasis added). ASI must offer proof that either: (1) Zilog had an improper objective or purpose to harm ASI; or (2) Zilog used a wrongful means to cause injury to the prospective business relationship. *Id.* at 286, 824 P.2d at 861 (1991).

DATED this 2nd day of January, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of January, 2015, I caused a true and correct copy of the foregoing **ZILOG, INC.'S TRIAL BRIEF** to be served by the method indicated below, and addressed to the following:

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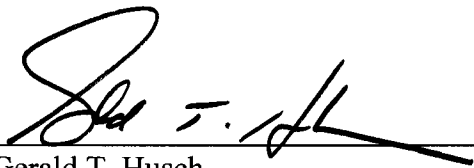
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☐ Hand Delivered  
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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
 an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
 Idaho Corporation; ZILOG, INC., a  
 Delaware Corporation; DAVID ROBERTS,  
 GYLE YEARSLEY, WILLIAM TIFFANY  
 and Defendants DOES I - X,

Defendants.

RELATED COUNTER ACTIONS

CASE NO. CV-OC-1123344

NOTICE OF JOINDER WITH ZILOG,  
 INC.'S OBJECTIONS AND COUNTER-  
 DESIGNATIONS TO PLAINTIFF  
 AMERICAN SEMICONDUCTOR,  
 INC.'S LIST OF DEPOSITION  
 DESIGNATIONS FOR USE AT TRIAL

NOTICE OF JOINDER - PAGE 1

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
 A.M. \_\_\_\_\_ P.M. 5

JAN 02 2015

CLERK OF DISTRICT COURT, Clerk  
 ANTONIA THIESSEN  
 DEPUTY

001580

COME NOW the Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany, by and through their attorney Gary L. Cooper, and give notice to the Court and counsel that these Defendants join with Defendant Zilog, Inc.'s Objections and Counter-Designations to Plaintiff American Semiconductor, Inc.'s List of Deposition Designations for Use At Trial.

DATED this 2<sup>nd</sup> day of January, 2015.

COOPER & LARSEN

GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of January, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702

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☐ Fax: 208-562-4901

Daniel W. Bower  
Stewart Taylor & Morris, PLLC  
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Boise, ID 83713

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Gerald T. Husch  
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Attorneys for Defendant Zilog, Inc.

NO. \_\_\_\_\_  
A.M. 920 FILED P.M. \_\_\_\_\_

JAN 05 2015

CHRISTOPHER D. RICH, Clerk  
By TENILLE RAD  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DEFENDANT ZILOG, INC.'S NOTICE  
OF ERRATA REGARDING ITS  
OBJECTIONS AND COUNTER-  
DESIGNATIONS TO PLAINTIFF  
AMERICAN SEMICONDUCTOR,  
INC.'S LIST OF DEPOSITION  
DESIGNATIONS FOR USE AT TRIAL**

**DEFENDANT ZILOG, INC.'S NOTICE OF ERRATA REGARDING ITS OBJECTIONS  
AND COUNTER-DESIGNATIONS TO PLAINTIFF AMERICAN SEMICONDUCTOR,  
INC.'S LIST OF DEPOSITION DESIGNATIONS FOR USE AT TRIAL - 1**

Client 37281621  
001582

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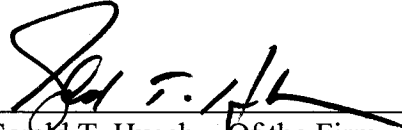
Zilog, Inc., by and through its counsel of record, Moffatt, Thomas, Barrett, Rock & Fields, Chtd., hereby provides this notice of errata in the above-captioned matter. After Zilog, Inc. filed its Objections and Counter-Designations to Plaintiff American Semiconductor, Inc.'s List of Deposition Designations for Use at Trial, it came to the attention of undersigned counsel that there were errors contained therein. Specifically, undersigned counsel for Zilog, Inc. discovered the following:

1. At page 12, the counter designations contain typographical errors, in that the first counter-designation (61:9 – 70:1) should be 61:9 – 62:1, and the last counter-designation (129:8 – 132:13) should be 142:8 – 145:13.

DATED this 4th day of January, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By



Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of January, 2015, I caused a true and correct copy of the foregoing **DEFENDANT ZILOG, INC.'S NOTICE OF ERRATA REGARDING ITS OBJECTIONS AND COUNTER-DESIGNATIONS TO PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S LIST OF DEPOSITION DESIGNATIONS FOR USE AT TRIAL** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229

Pocatello, ID 83205-4229  
Facsimile (208) 235-1182

*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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☐ Hand Delivered  
☐ Overnight Mail  
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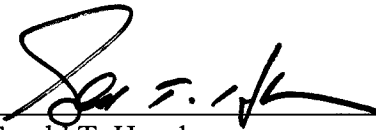
*Attorneys for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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☐ Overnight Mail  
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\_\_\_\_\_  
Gerald T. Husch

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SRB  
1-15-14

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 5

JAN 14 2015

CHRISTOPHER D. RICH, Clerk  
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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**SECOND SUPPLEMENT TO  
PLAINTIFF AMERICAN  
SEMICONDUCTOR, INC.'S  
REQUESTED JURY INSTRUCTIONS**

RELATED COUNTER ACTIONS

SECOND SUPPLEMENT TO PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S  
REQUESTED JURY INSTRUCTIONS - 1

4813-1031-2737.1

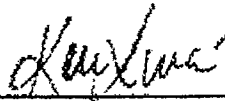
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Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its counsel of record, the law firm of Parsons Behle & Latimer, and pursuant to Rule 51 of the Idaho Rules of Civil Procedure, respectfully submits the following *Second Supplement* to Plaintiff American Semiconductor, Inc.'s Requested Jury Instructions ("*Second Supplement*"). This *Second Supplement* is intended to augment and not to replace the jury instructions previously submitted by ASI.

DATED this 14th day of January, 2015.

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

SECOND SUPPLEMENT TO PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S  
REQUESTED JURY INSTRUCTIONS - 2

4813-1031-2737.1

001586

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_****[Work Made for Hire]**

In this case, and as part of its counterclaim, Sage Silicon Solutions, LLC claims to own the copyright in the 16-bit timer at issue by virtue of work performed by David Roberts, Gyle Yearsley and William Tiffany.

The Copyright Act accords special treatment to works made for hire. It provides "the employer or other person for whom the work was prepared is considered the author for copyright purposes."

A work made for hire is one that is prepared by an employee in carrying out the employer or other person's business.

A work is made for hire within the scope of employment if (1) it is of the kind the employee is employed to perform; (2) it occurs substantially within the authorized time and space limits; and (3) it is made, at least in part, for the purpose of serving the employer.

The employer is considered to be the author of the work and owns the copyright unless the employer and employee have agreed otherwise in writing.

**Authority:**

Ninth Circuit Manual of Model Jury Instructions, Civil (2007) (modified); 17 U.S.C. § 101 (definition of work for hire), 17 U.S.C. § 201 (b) (rights in work for hire); *U.S. Auto Parts Network, Inc. v. Parts Geek, LLC*, 692 F.3d 1009, 1015 (9th Cir. 2012); *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 751–52 (1989) (Congress used the words “employee” and “employment” in 17 U.S.C. § 101 to describe the conventional relationship of employer and employee); *U.S. Auto Parts Network, Inc., v. Parts Geeks, LLC*, 692 F.3d 1009, 1117 (9th Cir. 2012) (explaining that absent a written agreement to the contrary, the employer is the author of a work made for hire within the scope of employment).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

SECOND SUPPLEMENT TO PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S  
REQUESTED JURY INSTRUCTIONS - 4

4813-1031-2737.1

001588

**PLAINTIFF'S REQUESTED INSTRUCTION NO. \_\_****[Factors Regarding Work for Hire]**

Whether Sage Silicon Solutions, LLC owns the copyright to the 16-bit timer at issue turns on whether David Roberts, Gyle Yearsley and William Tiffany were employees of ASI or were independent contractors during the relevant timeframe.

For purposes of determining ownership of the 16-bit timer at issue only, you should consider the following factors in determining whether David Roberts, Gyle Yearsley and William Tiffany were employees of ASI.

No single factor is determinative.

- (1) The skills required to create the work. The higher the skills required, the more likely the creator was an independent contractor rather than an employee.
- (2) The source of the tools or instruments used to create the work. The more the creator had to use ASI's tools or instruments, the more likely the creator was an employee rather than an independent contractor.
- (3) The location of where the work was done. The more the creator worked at ASI's premises, the more likely the creator was an employee rather than an independent contractor.
- (4) Applicability of employee benefits, like a pension plan or insurance. The more the creator is covered by the benefit plans ASI offers to other employees, the more likely the creator was an employee rather than an independent contractor.

- (5) Tax treatment of the creator by ASI. If ASI reported to tax authorities payments to the creator with no withholding or by use of a Form 1099, the more likely the creator was an independent contractor rather than an employee.
- (6) Whether the creator had discretion over when and how long to work. The more the creator could control his or her work times, the more likely the creator was an independent contractor rather than an employee.
- (7) Whether ASI has the right to assign additional projects to the creator. The more the creator could refuse to accept additional projects unless additional fees were paid, the more likely the creator was an independent contractor rather than an employee.
- (8) Duration of the relationship between the parties. The more the creator worked on a project basis for ASI, the more likely the creator was an independent contractor rather than an employee.
- (9) Method of payment. The more the creator usually works on a commission or onetime-fee basis, the more likely the creator was an independent contractor rather than an employee.
- (10) Whether the creator hired (or could have hired) and paid his or her own assistants. The more the creator hires and pays for his or her own assistants, the more likely the creator was an independent contractor rather than an employee.
- (11) Whether ASI is a business. If the party that did the hiring is not a business, it is more likely that the creator was an independent contractor rather than an employee.

**Authority:**

Ninth Circuit Manual of Model Jury Instructions (2007) (modified); *Aymes v. Bonelli*, 980 F.2d 857, 860-64 (2d Cir. 1992); *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1145 (9th Cir. 2003) (grant of royalties to a creator of a work made for hire, absent an express contractual provision to the contrary, does not create a beneficial ownership interest in that creator); *Cleary v. News Corp.*, 30 F.3d 1255, 1259-60 (9th Cir. 1994) ("Under copyright law, a work for hire clause [in a contract] vests all authorship rights in the employer" including the right of attribution; the employer is considered to be the author of the work for hire "once authorship rights are relinquished through a work for hire contract provision."); *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 739-40 (1989).

GIVEN	_____
REFUSED	_____
MODIFIED	_____
COVERED	_____
OTHER	_____

SECOND SUPPLEMENT TO PLAINTIFF AMERICAN SEMICONDUCTOR, INC.'S  
REQUESTED JURY INSTRUCTIONS - 7

4813-1031-2737.1

001591

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14th day of January, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

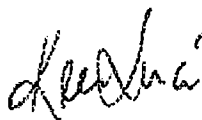
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LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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Stephen R. Thomas  
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*Attorneys for Defendant Zilog, Inc.*

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Kennedy K. Luva

JAN 16 2015

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company;  
ZILOG, INC., a Delaware  
corporation; DAVID ROBERTS, GYLE  
YEARSLEY, WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company;  
DAVID ROBERTS, GYLE YEARSLEY,  
WILLIAM TIFFANY, individuals,

Counterclaimants,

vs.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV-OC 1123344

**JURY INSTRUCTIONS**

THOMAS F. NEVILLE  
District Judge  
Presiding



INSTRUCTION NO. 1

These instructions define your duties as members of the jury and the law that applies to this case. Your duties are to determine the facts, to apply the law set forth in these instructions to those facts, and in this way to decide the case. In so doing, you must follow these instructions. You must consider them as a whole, not picking out one and disregarding others. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rule of law. At times during the trial, I sustained an objection to a question without permitting the witness to answer. Rulings on such matters are solely my responsibility, and you must not speculate as to the reason for the objection, or the reason for my ruling. In reaching your decision, you may not consider such a question or speculate as to what the answer would have shown. In addition, if there were times when after an answer was given, I instructed that it be stricken from the record, that you disregard it and that you dismiss it from your minds. Again, these are matters that are solely my responsibility, and you must not speculate as to the reason for my decision. In reaching your decision, you may not consider this testimony, but should deliberate as though you had not heard it at all. Except as explained in this instruction, none of my rulings were intended by me to indicate any opinion concerning the evidence in this case.

The arguments and remarks of the attorneys involved in this case are intended to help you in understanding the evidence and applying the instructions, but they are not themselves evidence.

If any argument or remark has no basis in the evidence, then you should disregard it. However, there are two exceptions to this rule: (1) An admission of fact by one attorney is binding on his party; and (2) Stipulations of fact by all attorneys are binding on all parties.

The law does not require you to believe all of the evidence admitted in the course of the trial. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it. In so doing, you bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs, you determine for yourselves whom you believe, what you believe and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In evaluating the testimony, you should consider such items as: the interest, bias or prejudice of any witness in the outcome of this case; the age and appearance of the witness and the manner in which he gives his testimony; the opportunity that the witness had to observe the facts about which he testified; the contradiction, if any, of a witness's testimony by other evidence; any statements made by the witness at other times that are inconsistent with his present testimony; any evidence regarding a witness's general reputation for truth, honesty or integrity.

In evaluating the exhibits, you should consider such items as: the circumstances under which the exhibit was prepared; and the probability that the exhibit accurately reflects what it is intended to show in light of the other evidence in the case.

INSTRUCTION NO. 2

The law does not require you to accept all of the evidence which is admitted. In determining what evidence you will accept you must make your own evaluation of the evidence and determine the degree of weight you choose to give to that evidence.

The testimony of a witness may fail to conform to the facts as they occurred because he or she is intentionally telling a falsehood, or because he or she did not accurately see or hear that about which he or she testifies, or because his or her recollection of the event is faulty, or because he or she has not expressed himself or herself clearly in giving his or her testimony. There is no formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves the reliability or unreliability of statements made to you by others. The same considerations that you use in your everyday dealings are the considerations which you apply in your deliberations.

In evaluating testimony you should consider such items as the interest or lack of interest of any witness in the outcome of the case; the bias or prejudice of a witness, if there be any; the age, the appearance, the manner in which the witness gives his or her testimony on the stand; the opportunity that the witness had to observe the facts concerning which he or she testifies; the probability or improbability of the witness's testimony when viewed in the light of all of the other evidence in the case; the contradiction, if any, of a witness's testimony by other evidence; statements, if any, made by the witness at other times inconsistent with his or her present testimony; are all items that may be taken into your consideration in

determining the weight, if any, you will assign to that witness's testimony.

INSTRUCTION NO. 3

Evidence may be either direct or circumstantial. Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves the fact, by proving one or more facts from which the fact at issue may be inferred.

The law makes no distinction between direct and circumstantial evidence as to the degree of proof required; each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

INSTRUCTION NO. 4

A witness who has special knowledge in a particular matter may give his or her opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such an opinion. Give it the weight, if any, to which you deem it entitled.

INSTRUCTION NO. 5

Any party who asserts that certain facts existed or exist has the burden of proving those facts. When I say that a party has the burden of proof on any proposition, or use the expression "if you find" or "if you decide", I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he or she has the burden of proof is more probably true than not true.

INSTRUCTION NO. 6

ASI has alleged that the defendant, David Roberts, breached paragraph 7, the Duty Not to Compete provision, of the Employee Confidentiality Agreement.

In order for ASI to prevail on its breach of contract claim, it must prove the following elements by a preponderance of the evidence:

1. A contract existed between ASI and defendant David Roberts;
2. The defendant breached the contract;
3. ASI has been damaged on account of the breach; and
4. The amount of the damages.

The defendant, David Roberts, denies that he breached paragraph 7, the duty not to compete provision. If you find that the defendant, David Roberts, breached paragraph 7, the Duty Not to Compete provision, then you must consider whether the defendant has proved any of the affirmative defenses in Instruction No. 9. If you find from your consideration of all the evidence that any of the elements in this instruction has not been proved, your verdict should be for the defendant, David Roberts.



INSTRUCTION NO. 7

ASI has alleged that the defendant, Gyle Yearsley, breached paragraph 7, the Duty Not to Compete provision, of the Employee Confidentiality Agreement.

In order for ASI to prevail on its breach of contract claim, it must prove the following elements by a preponderance of the evidence:

1. A contract existed between ASI and defendant Gyle Yearsley;
2. The defendant breached the contract;
3. ASI has been damaged on account of the breach; and
4. The amount of the damages.

The defendant, Gyle Yearsley, denies that he breached paragraph 7, the duty not to compete provision. If you find that the defendant, Gyle Yearsley, breached paragraph 7, the Duty Not to Compete provision, then you must consider whether the defendant has proved any of the affirmative defenses in Instruction No. 9. If you find from your consideration of all the evidence that any of the elements in this instruction has not been proved, your verdict should be for the defendant, Gyle Yearsley.

INSTRUCTION NO. 8

ASI has alleged that the defendant, William Tiffany, breached paragraph 7, the Duty Not to Compete provision, of the Employee Confidentiality Agreement.

In order for ASI to prevail on its breach of contract claim, it must prove the following elements by a preponderance of the evidence:

1. A contract existed between ASI and defendant William Tiffany;
2. The defendant breached the contract;
3. ASI has been damaged on account of the breach; and
4. The amount of the damages.

The defendant, William Tiffany, denies that he breached paragraph 7, the duty not to compete provision. If you find that the defendant, William Tiffany, breached paragraph 7, the Duty Not to Compete provision, then you must consider whether the defendant has proved any of the affirmative defenses in Instruction No. 9. If you find from your consideration of all the evidence that any of the elements in this instruction has not been proven, your verdict should be for the defendant, William Tiffany.

INSTRUCTION NO. 8A

You must determine what was intended by the parties as evidenced by the contracts in this case. In making this determination you should consider, from the evidence, the following:

1. The contract must be construed as a whole, including all of the circumstances giving rise to it, to give consistent meaning to every part of it.

2. Language must be given its ordinary meaning, unless you find from the evidence that a special meaning was intended.

3. Any communications, conduct or dealings between the contracting parties showing what they intended may be considered, provided that such may not completely change the agreement or construe one term inconsistently with the remainder of the terms.

4. The contract should be construed to avoid any contradiction or absurdities.

INSTRUCTION NO. 8B

You may not consider any explanation or interpretation of the contract offered by any witness, or any oral agreement of the parties occurring before execution of the written agreement which is inconsistent with the plain, ordinary meaning of the written agreement. While you may consider the testimony of witnesses if necessary to clarify an ambiguity, you may not consider such testimony to completely change the agreement, or to construe a term of the agreement in such a fashion that it no longer fits with the other, non-ambiguous terms.

INSTRUCTION NO. 9

In this case the defendants have asserted certain affirmative defenses to the claim that they breached paragraph 7 of the Employee Confidentiality Agreement. The defendants have the burden of proof on each of the affirmative defenses asserted:

1. If there was a breach of contract, it was not a material breach; or

2. Defendants substantially performed the Employee Confidentiality Agreement.

A "material" breach means a breach that defeats a fundamental purpose of the contract. There is no material breach of contract where a party substantially performs. "Substantial performance" is performance which, despite a deviation from contract requirements, provides the important and essential benefits of the contract to the promisee. A contract may be substantially performed even though there may have been some deviations or omissions from the performance called for by the precise language of the contract.

If you find from your consideration of all the evidence that either of the above numbered affirmative defenses has been proved, then your verdict should be for the individual Sage defendants.

INSTRUCTION NO. 10

ASI claims that it was harmed by each of the individual defendants David Roberts, Gyle Yearsley, and William Tiffany's alleged breach of his respective fiduciary duty of loyalty to ASI.

The fiduciary duty of loyalty requires that throughout an employment relationship, an employee not place himself in a position where his own interests become antagonistic to those of his employer. An employee must refrain from competing with his employer and from taking action on behalf of or otherwise assisting his employer's competitors.

In order to prove a claim for breach of the fiduciary duty of loyalty against each of the individual defendants David Roberts, Gyle Yearsley, and William Tiffany, ASI must prove all of the following elements as to each of the defendants:

1. The defendant was an employee of ASI;
2. The defendant acted in a manner where he served his own private interests which were adverse to ASI's interests, or acted on behalf of a party whose interests were adverse to ASI's interests, or assisted a competitor of ASI;
3. The defendant's conduct caused harm to ASI; and
4. The nature and extent of ASI's damages and the amount thereof.

If you find from your consideration of all the evidence that each of the foregoing propositions have been proven against a particular defendant, then your verdict as to that defendant should be for ASI. If you find from your consideration of all the evidence that any of the foregoing

elements has not been proved against a particular defendant,  
then your verdict should be for that defendant.

INSTRUCTION NO. 11

ASI has alleged that defendant, David Roberts, interfered with a prospective economic expectancy of contracting with Zilog to which ASI alleges it was entitled. In order for ASI to prevail on its tortious interference with a prospective economic expectancy claim, it must prove the following elements by a preponderance of the evidence:

1. the existence of a valid economic expectancy by ASI;
2. knowledge of the expectancy on the part of the defendant Roberts;
3. intentional interference by Roberts inducing termination of the expectancy;
4. the interference was wrongful by some measure beyond the fact of the interference itself; and
5. resulting damage to ASI whose expectancy has been disrupted.

If you find from your consideration of all the evidence that each of the elements has been proven, then your verdict should be for ASI. If you find from your consideration of all the evidence that any of the elements have not been proven, your verdict should be for the defendant David Roberts.



INSTRUCTION NO. 12

ASI has alleged that defendant Gyle Yearsley interfered with a prospective economic expectancy of contracting with Zilog to which ASI alleges it was entitled. In order for ASI to prevail on its tortious interference with a prospective economic expectancy claim, it must prove the following elements by a preponderance of the evidence:

1. the existence of a valid economic expectancy by ASI;
2. knowledge of the expectancy on the part of the defendant Yearsley;
3. intentional interference by Yearsley inducing termination of the expectancy;
4. the interference was wrongful by some measure beyond the fact of the interference itself; and
5. resulting damage to ASI whose expectancy has been disrupted.

If you find from your consideration of all the evidence that each of the elements has been proven, then your verdict should be for ASI. If you find from your consideration of all the evidence that any of the elements have not been proven, your verdict should be for the defendant Gyle Yearsley.

INSTRUCTION NO. 13

ASI has alleged that defendant William Tiffany interfered with a prospective economic expectancy of contracting with Zilog to which ASI alleges it was entitled. In order for ASI to prevail on its tortious interference with a prospective economic expectancy claim, it must prove the following elements by a preponderance of the evidence:

1. the existence of a valid economic expectancy by ASI;
2. knowledge of the expectancy on the part of the defendant Tiffany;
3. intentional interference by Tiffany inducing termination of the expectancy;
4. the interference was wrongful by some measure beyond the fact of the interference itself; and
5. resulting damage to ASI whose expectancy has been disrupted.

If you find from your consideration of all the evidence that each of the elements has been proven, then your verdict should be for ASI. If you find from your consideration of all the evidence that any of the elements have not been proven, your verdict should be for the defendant William Tiffany.

INSTRUCTION NO. 14

ASI has alleged that defendant Sage Silicon Solutions, LLC interfered with a prospective economic expectancy of contracting with Zilog to which ASI alleges it was entitled. In order for ASI to prevail on its tortious interference with a prospective economic expectancy claim, it must prove the following elements by a preponderance of the evidence:

1. the existence of a valid economic expectancy by ASI;
2. knowledge of the expectancy on the part of the defendant entity Sage Silicon Solutions, LLC;
3. intentional interference by Sage Silicon Solutions inducing termination of the expectancy;
4. the interference was wrongful by some measure beyond the fact of the interference itself; and
5. resulting damage to ASI whose expectancy has been disrupted.

If you find from your consideration of all the evidence that each of the elements has been proven, then your verdict should be for ASI. If you find from your consideration of all the evidence that any of the elements have not been proven, your verdict should be for the defendant Sage Silicon Solutions, LLC.

INSTRUCTION NO. 16

A claim of tortious interference with economic expectancy requires proof that plaintiff had a reasonable expectation of entering into a business relationship with a third party. A valid economic expectancy requires a reasonable likelihood that the expectancy would have come to fruition. A mere hope of a business relationship is not a valid economic expectancy.

INSTRUCTION NO. 17

To establish that a defendant had knowledge of ASI's economic expectancy, ASI must prove that the particular defendant either had actual knowledge of the economic expectancy or had knowledge of facts which would lead a reasonable person to believe that such an economic expectancy existed.

INSTRUCTION NO. 18

To establish intent, ASI must prove that either that the defendant desired to interfere with ASI's prospective economic expectancy or that the defendant knew the interference was certain or substantially certain to result from his or its actions.

The defendant need not have acted with the specific intent to interfere with ASI's prospective economic relationship, but need only have known the interference to have been a necessary consequence of his or its actions.

INSTRUCTION NO. 19

In order to find that any interference with ASI's prospective economic expectancy was wrongful, ASI must prove that either: (1) the defendant had an improper motive to harm ASI; or (2) the defendant used means to cause injury to the prospective advantage and those means were wrongful by reason of a statute, regulation, recognized common law rule, or an established standard of a trade or profession.

The mere pursuit of a defendant's own business purposes is not sufficient to support an inference of an improper motive to harm ASI.

INSTRUCTION NO. 20

With respect to ASI's claim against Zilog for tortious interference with a contract, ASI has the burden of proving each of the following elements by a preponderance of the evidence:

(1) ASI had an existing employment contract with the individual Sage defendants;

(2) Zilog knew of the contract or had knowledge of facts which would lead a reasonable person to believe that such a contract existed;

(3) Zilog intentionally interfered with the contract causing a breach of the contract; and

(4) Injury to ASI resulted from such breach, and the amount of damages, if any, sustained.

If you find from your consideration of all the evidence that each of the elements has been proven, then your verdict should be for ASI. If you find from your consideration of all the evidence that any of the elements in this instruction has not been proven, your verdict should be for Zilog.



INSTRUCTION NO. 21

In considering whether any intentional interference by Zilog with the employment contracts of the individual Sage defendants was improper, you may consider the following factors:

- (a) the nature of Zilog's conduct;
- (b) Zilog's motive;
- (c) the interests of ASI with which Zilog's conduct is said to interfere;
- (d) the interest sought to be advanced by Zilog;
- (e) the social or business interests in protecting the freedom of action of Zilog and the contractual interests of ASI;
- (f) the proximity or remoteness of Zilog's conduct to the alleged interference; and
- (g) the relationships between the parties.

INSTRUCTION NO. 23

In considering whether any intentional interference by ASI with the Sage defendants' contract with Zilog was improper, you may consider the following factors:

- (a) the nature of ASI's conduct;
- (b) ASI's motive;
- (c) the interests of the Sage defendants with which ASI's conduct is said to interfere;
- (d) the interest sought to be advanced by ASI;
- (e) the social or business interests in protecting the freedom of action of ASI and the contractual interests of the Sage defendants;
- (f) the proximity or remoteness of ASI's conduct to the interference; and
- (g) the relationships between the parties.

INSTRUCTION NO. 22

With respect to the Sage defendants' counterclaim against ASI for tortious interference with a contract, the Sage defendants have the burden of proving each of the following elements by a preponderance of the evidence:

(1) The Sage defendants were a party to an existing contract with Zilog;

(2) ASI knew of the contract or had knowledge of facts which would lead a reasonable person to believe that such a contract existed;

(3) ASI intentionally interfered with the contract causing a breach; and

(4) Injury to the Sage defendants resulted from such breach, and the amount of damages, if any, sustained.

If you find from your consideration of all the evidence that each of the elements has been proven, then your verdict should be for the Sage defendants on their counterclaim. If you find from your consideration of all the evidence that any of the elements in this instruction has not been proven, your verdict should be for ASI.

INSTRUCTION NO. 25

The individual Sage defendants and Sage Silicon Solutions, LLC claim that ASI received a benefit in the form of the value of the 16-bit timer that it claims to have owned prior to the individual defendants David Roberts, Gyle Yearsley and William Tiffany's respective employments with ASI.

Even if there is no agreement between the parties, under certain circumstances where a party has been unjustly enriched by the actions of another the law will require that party to compensate the other for the unjust gain. To recover under this theory, Sage Silicon Solutions, LLC has the burden of proving each of the following:

1. Sage Silicon Solutions, LLC provided a benefit to ASI;
2. ASI accepted the benefit; and
3. Under the circumstances, it would be unjust for ASI to retain the benefit without compensating Sage Silicon Solutions, LLC for its value.

If you find from your consideration of all the evidence that each of the elements required of Sage Silicon Solutions, LLC has been proven, then your verdict must be for Sage Silicon Solutions, LLC. If you find from your consideration of all the evidence that any of these elements have not been proven, your verdict should be for ASI.

INSTRUCTION NO. 26

The measure of damages in a claim of unjust enrichment is the value of the benefit bestowed which, in equity, would be unjust to retain without compensation. The measure of damages is not necessarily the value of the money, labor and materials provided, but the amount of benefit received which would be unjust to retain.

INSTRUCTION NO. 27

If you decide ASI is entitled to recover from any of the individual defendants David Roberts, Gyle Yearsley, William Tiffany, defendant Sage Silicon Solutions, LLC, and/or defendant Zilog, Inc., you must determine the amount of money that will reasonably and fairly compensate ASI for its lost net profits proved by the evidence to have resulted from a defendant's conduct.

To recover damages for lost profits ASI must prove it is reasonably certain it would have earned profits but for a defendant's conduct. The amount of lost profits need not be calculated with mathematical precision, but there must be a reasonable basis for computing the loss. This requires that evidence of overhead expenses and other costs of producing the income be presented and deducted from gross revenues.

Only damages that fairly compensate ASI for its loss are permitted. An award of damages in this context must be calculated to place ASI in the same economic position it would have been in if the contract had been performed. Whether ASI has proved loss of profits is for you to determine.

INSTRUCTION NO. 28

If you determine that a party is entitled to recover under two claims for the same injury, you should not award more than is required to adequately compensate the party for that one injury.

INSTRUCTION NO. 29

In instructing you on the subject of damages, I do not express any opinion whether any party is or is not entitled to damages on any claim. You need consider the question of damages only if you find that any party is liable to any other party.



INSTRUCTION NO. 30

The corporations involved in this case are entitled to the same fair and unprejudiced treatment that an individual would be under like circumstances. You should decide this case with the same impartiality that you would use in deciding a case between individuals.

INSTRUCTION NO. 31

In this case, certain evidence was admitted for a limited purpose. I called your attention to this when the evidence was admitted. I remind you that whenever evidence was admitted for a limited purpose, you must not consider such evidence for any purpose other than the limited purpose for which it was admitted. An example of this is evidence which was admitted for illustrative purposes.

INSTRUCTION NO. 32

If these instructions state any rule, direction or idea in varying ways, no emphasis is intended by me and none must be inferred by you. You are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and are to regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 33

I have now outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you; and then you will retire to the jury room for your deliberations.

The attitude and conduct of jurors at the beginning of their deliberations are matters of considerable importance. It is rarely productive for a juror, at the outset, to make an emphatic expression of his or her opinion on the case or to state how he or she intends to vote. When one does that at the beginning, his or her sense of pride may be aroused; and he or she may hesitate to change his position, even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

Consult with one another. Consider each other's views; and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

INSTRUCTION NO. 34

The law forbids you to determine any issue in this case by chance. Thus, if you determine that the plaintiff is entitled to recover, you must not arrive at the amount of damages to be awarded by agreeing in advance to take the independent estimate of each juror of the amount to be awarded and then to average such estimates to set the amount of your award.

INSTRUCTION NO. 35

On retiring to the jury room, select one of your number as a Foreman, who will preside over your deliberations.

An appropriate form of special verdict will be submitted to you with my instructions.

A verdict may be reached by three-fourths (3/4) of your number, or by nine (9) of you. As soon as nine or more of you shall have agreed upon the answers to the questions in the special verdict, you should fill it out and have it signed. If your special verdict is unanimous, your Foreman alone will sign it; but if nine or more, but less than the entire jury, agree, then those so agreeing will sign the special verdict form.

As soon as you have completed and signed the special verdict, you will notify the Bailiff, who will then return you into open court.

Dated this 15<sup>th</sup> day of January, 2015.

Thomas F. Neville  
THOMAS F. NEVILLE  
District Judge

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:10

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA **JAN 16 2015**

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY,  
WILLIAM TIFFANY, individuals,

Counterclaimants,

vs.

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Counterdefendant.

CASE NO. CV-OC-1123344

**SPECIAL VERDICT**

We, the jury in the above-entitled action, find the following Special Verdict on the questions  
submitted to us:

**QUESTION 1:** Did some or all of the following defendants breach paragraph 7 (Duty Not to Compete) of the Employee Confidentiality Agreement?

David Roberts:	YES <u>X</u>	NO <u>      </u>
Gyle Yearsley:	YES <u>X</u>	NO <u>      </u>
William Tiffany:	YES <u>X</u>	NO <u>      </u>

**QUESTION 2:** Did some or all of the following defendants breach a fiduciary duty of loyalty to American Semiconductor, Inc.?

David Roberts:	YES <u>X</u>	NO <u>      </u>
Gyle Yearsley:	YES <u>X</u>	NO <u>      </u>
William Tiffany:	YES <u>X</u>	NO <u>      </u>

**QUESTION 3:** If you answered "NO" to all of the above questions, do not answer this question. Instead, proceed to question 4. If you answered "YES" to any of the above questions, what is the total amount of damages, if any, sustained by American Semiconductor, Inc. that were caused by the breach?

Amount of Damages: \$ *Barlow*  
~~195,175~~ 0

**QUESTION 4:** Did some or all of the following defendants intentionally interfere with American Semiconductor, Inc.'s economic expectancy of contracting with Zilog, Inc.?

David Roberts:	YES <u>X</u>	NO <u>      </u>
Gyle Yearsley:	YES <u>X</u>	NO <u>      </u>
William Tiffany:	YES <u>X</u>	NO <u>      </u>
Sage Silicon Solutions, LLC:	YES <u>X</u>	NO <u>      </u>



**QUESTION 5:** If you answered "NO" to question 4, do not answer this question.

Instead, proceed to question 6. If you answered "YES" to question 4, what is the total amount of damages, if any, sustained by American Semiconductor, Inc. that resulted from the intentional conduct of any or all of the Sage Defendants?

Amount of Damages: \$ 195,175

**QUESTION 6:** Did Zilog, Inc. intentionally interfere with American Semiconductor, Inc.'s contracts with the individual Sage defendants?      YES \_\_\_\_\_      NO X

X**QUESTION 7:** If you answered "NO" to question 6, do not answer this question.

Instead, proceed to question 8. If you answered "YES" to question 6, what is the total amount of damages, if any, sustained by American Semiconductor, Inc. that resulted from the intentional conduct of Zilog, Inc.?

Amount of Damages: \$ \_\_\_\_\_

**QUESTION 8:** Did American Semiconductor, Inc. intentionally interfere with Sage Silicon Solutions, LLC's contract with Zilog, Inc.?

YES X      NO \_\_\_\_\_

**QUESTION 9:** If you answered "NO" to question 8, do not answer this question.

Instead, proceed to question 10. If you answered "YES" to question 8, what is the total amount of damages, if any, sustained by Sage Silicon Solutions, LLC that resulted from the intentional conduct of American Semiconductor, Inc.?

Amount of Damages: \$ 0

. **QUESTION 10:** Was American Semiconductor, Inc. unjustly enriched from its use of Sage Silicon Solution, LLC's 16-bit timer? YES \_\_\_\_\_ NO X

X **QUESTION 11:** If you answered "NO" to question 10, do not answer this question. If you answered "YES" to question 10, what is the amount of the benefit conferred on American Semiconductor, Inc. through its use of Sage Silicon Solutions, LLC's 16-bit timer that would be unjust for American Semiconductor, Inc. to retain?

Amount of Damages: \$ \_\_\_\_\_

Dated this 16 day of January, 2015.

Sharon D Barlow  
Foreman

If the decision is not unanimous, the jurors in support of the forgoing verdict form should sign their names in the space provided below.

Carrie A. Maillard <u>Carrie A. Maillard</u> 1) 6) 11) N/A 2) 7) N/A 3) 8) 4) 9) 5) 10)	Nicole <u>Nicole</u> 1. 5. 9. 2. 6. 10. 3. X NA X NA 4. X NA X NA
Steve Ferguson <u>Steve Ferguson</u> 1) 6) 11 N/A 2) 7 NA 3) 8) 4) 9) 5) 10)	Christina Thompson <u>Christina Thompson</u> 3, 5, 6, 7-NA, 8, 9, 10 11-NA
Annette Slater <u>Annette Slater</u> 1, 2, 3, 4, 5, 6, 9, 10	Sharon Barlow <u>SHARON BARLOW</u> 1, 2, 3, 4, 5, 6, 7(NA) 8, 9, 10, 11 NA
Susan Powell <u>Susan Powell</u> 1, 2, 3, 4, 5, 6, 7 NA, 9, 10, 11 NA	Nancy Lane <u>Nancy Lane</u> 1, 2, 3, 4, 5, 6, 7, (NA) 8, 9, 10, 11, NA
ASUKULU M. ETOKA <u>Asukulu M. Etoke</u> 1, 2, 3, 4, 5, 6, 7 NA, 8, 9, 10 11 NA	Shula Lancham <u>Shula Lancham</u> 6, 10, 8
Tommy Fardes <u>Tommy Fardes</u> 1, 2, 3, 4, 5, 6, 8, 9, 10 (7-N/A)	Letna Earley <u>Letna Earley</u> 2, 3, 4, 5, 6, 7(NA), 8, 10, 11(NA)

JAN 21 2015

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**JUDGMENT**

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY,  
WILLIAM TIFFANY, individuals,

Counterclaimants,

vs.

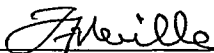
AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Counterdefendant.

JUDGMENT IS ENTERED AS FOLLOWS:

- (1) Plaintiff American Semiconductor, Inc. shall recover the amount of **\$195,175.00** on its claim for tortious interference with prospective economic expectancy against defendants David Roberts, Gyle Yeasley, <sup>LS</sup> William Tiffany, and Sage Silicon Solutions, LLC, plus post-judgment interest at the rate of 5.125 % per annum; FM
- (2) Plaintiff American Semiconductor, Inc. shall recover nothing on its claims against defendant Zilog, Inc.; and
- (3) Counterclaimants David Roberts, Gyle Yearsley, William Tiffany and Sage Silicon Solutions, LLC shall recover nothing on their claims against counterdefendant American Semiconductor, Inc.

SO ORDERED AND DATED this 21<sup>st</sup> day of January, 2015.

  
\_\_\_\_\_  
Thomas F. Neville  
DISTRICT JUDGE

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21<sup>st</sup> day of January, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
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Facsimile: (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

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☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
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barbie@cooper-larsen.com

Daniel W. Bower  
Chad Bernards  
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*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

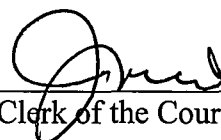
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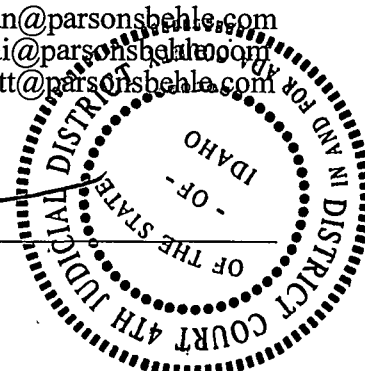
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Gerald T. Husch  
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*Attorneys for Defendant Zilog, Inc.*

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sarnett@parsonsbhleh.com

  
Clerk of the Court



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*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
Gyle Yearsley and William Tiffany*

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Email: [chad@stm-law.com](mailto:chad@stm-law.com)

*Counsel for Counterclaimants*

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 239

FEB 04 2015  
CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, RUSSELL LLOYD, )  
WILLIAM TIFFANY, EVELYN PERRYMAN, )  
and Defendants DOES I - X, )  
 )  
Defendants. )  
\_\_\_\_\_ )

CASE NO. CV-OC-1123344

**AFFIDAVIT OF GARY L. COOPER  
IN SUPPORT OF COSTS AND  
ATTORNEY FEES**

SAGE SILICON SOLUTIONS, LLC, an )  
Idaho limited liability company; DAVID )  
ROBERTS, GYLE YEARSLEY, RUSSELL )  
LLOYD, WILLIAM TIFFANY, EVELYN )  
PERRYMAN, individuals, )  
) )  
Counterclaimants, )  
) )  
vs. )  
) )  
AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
) )  
Counterdefendant. )  
\_\_\_\_\_ )

STATE OF IDAHO )  
:SS  
County of Bannock )

GARY L. COOPER, being first duly sworn on oath, deposes and states as follows:

1. I am the lead attorney for the Sage Defendants in this case and the information in this Affidavit is based on my personal knowledge.
2. I was retained by Farmers Insurance and State Farm to defend the Sage Defendants under two separate policies. The defense was under a reservation of rights. The Sage Defendants were advised that they would be defended but that it was unlikely there was any coverage. With the voluntary dismissal by ASI of the Seventh Cause of Action alleging that the Sage Defendants had falsely stated on its website that it was working with ASI, any possibility of coverage under the two insurance policies was eliminated. Farmers Insurance currently has pending a Declaratory Judgment Action to judicially declare that no coverage exists for the verdict returned by the jury and the judgment entered by the Court. Farmers Insurance and State Farm paid \$160/hour for my services. Farmers



Insurance and State Farm agreed to split the cost of defense equally.

3. I graduated from the University of Idaho School of Law in 1975 and have been engaged in the private practice of law since. I started with Racine, Huntley and Olson in Pocatello in 1975 and practiced there for 23 years, approximately 16 years as a named partner until 1998 when I started my own firm with Reed Larsen. Cooper & Larsen just celebrated its sixteenth year of existence. I am starting my fortieth year in practice this year and this trial was my seventieth jury trial as lead counsel. I have also handled numerous administrative hearings and arbitrations. I am a Fellow in the American College of Trial Lawyers which is by invitation only and requires a rigorous background check to satisfy the admission requirements of the College. I am also an Advocate in the American Board of Trial Advocates which admits members by invitation only. These are two of the most prestigious organizations of trial lawyers in the United States because these organizations require documented and confirmed jury trial experience. I am a founding member of the Portneuf Inn of Court. I have served on the Professional Conduct Board for the last twelve years and continue to chair panels of two lawyers and a lay member which hear disciplinary matters. I am a member of the local rules committee for the Federal Court. I have been a tribal judge for the Shoshone Bannock Tribal Court for approximately fifteen years. In my opinion a reasonable fee for my education, training and experience is at least \$250/hour.

4. I have considered the factors identified in IRCP 54(e)(3) for determination of the amount of attorney fees to be awarded in the event this Court determines that the Sage Defendants are entitled to attorney fees:

A. The time and labor required in the defense of the Sage Defendants is identified with specificity in the detailed billing records attached to this Affidavit. Through January 22, 2015 the time spent by the various attorneys working on the defense of this claim and the amount actually paid for their services are as follows:

Attorney/Paralegal	Hours	Actual Rate	Actual Fee	Reasonable Rate	Reasonable Fee
Gary L. Cooper	1001.25	\$160	\$160,200	\$250	\$250,312.50
Russell Metcalf	34.4	\$175	\$6,020		\$6,020
Cary Colaianni	67	\$160	\$10,720		\$10,720
J.D. Oborn	179.9	\$130	\$23,387		\$23,387
Anson Call	18.2	\$130	\$2,366		\$2,366
Barbie Snell (Paralegal)	31.95	\$80	\$2,556		\$2,556
Vivian Meyer (Paralegal)	30.8	\$80	\$2,464		\$2,464
<b>Total Hours</b>	<b>1,329.10</b>	<b>Total Fees</b>	<b>\$207,713</b>	<b>Total</b>	<b>\$297,825.50</b>

\* Prior to my retention in this matter, the Sage Defendants were represented by Russell G. Metcalf. Mr. Metcalf charged \$175 per hour and performed 34.4 hours of work for a total of \$6,020 in attorney fees that were incurred in the defense of this matter. Russell Metcalf has been admitted to the practice of law since 2004 and has had a varied practice. I reviewed the work he performed and I am of the opinion that a reasonable rate for his work was \$175/hour.

\* Cary Colaianni was an associate in my office and worked on this case. He was admitted to practice law in 1986 after graduating from the University of Idaho law school. He was involved in briefing and evaluating the opposition to punitive damages and summary judgment motions. I reviewed the work he performed and I am of the opinion that a reasonable rate for his work was \$160/hour.

\* J.D. Oborn and Anson Call are associates in my office and worked on this case. They have both been admitted to practice law for less than five years

and both have worked as clerks for state District Judges. Both were involved in the briefing of motions in limine and Mr. Oborn was also involved in briefing the opposition to the motion for punitive damages and briefing the motions for and against summary judgment as well as assisting at trial. I supervised their work and I am of the opinion that a reasonable rate for their work was \$130/hour.

- \* Barbie Snell and Vivian Meyer are both paralegals employed by my firm. They both have at least ten years experience as paralegals. I supervised their work and I am of the opinion that a reasonable rate for their services was \$80/hour.

Attached to this affidavit are the invoices of Mr. Metcalf and a billing report detailing the attorney fees charged by Cooper & Larsen, Chartered. It is anticipated that at least another \$10,000 in attorney fees will be expended through post-trial motions and the Sage Defendants request leave to submit a supplemental Affidavit detailing those fees in the event attorney fees are awarded to the Sage Defendants.

- B. The questions involved in the litigation were both novel and difficult. This case involved high end commercial litigation which required extensive written discovery, depositions, analysis of thousands of pages of documents, motion practice and ultimately a jury trial.
- C. This case required a high level of skill to perform the legal services for the Sage Defendants properly. The Sage Defendants were defended under a reservation of rights and it was clear from the outset that it was unlikely that any judgment entered against the Sage Defendants would not be covered by the insurance policies in question. Not only were the legal issues in the litigation challenging, the relationship

between insurer and insured also created a level of complexity that required a high level of legal skill to provide the services necessary to defend the Sage Defendants. I have forty years of experience handling litigation and litigation involving defense of insureds under reservation of rights.

- D. The prevailing charges for this kind of commercial litigation is far in excess of the charges paid by the insurance companies that retained me to defend the Sage Defendants. I am familiar with the prevailing charges for similar work by attorneys of education, training and experience similar to mine and I believe that the prevailing charges are at least \$250/hour.
- E. The fee that I charged was fixed at \$160/hour.
- F. Once a Protective Order was entered in this case the litigation went forward on a fast track for the complexity of the issues involved in this case.
- G. ASI sought from the Sage Defendants in excess of \$1 Million dollars at trial. Prior to trial, the Sage Defendants served an Offer of Judgment in the amount of \$100,000. ASI never responded to the Offer of Judgment. After ten trial days, the jury returned a Special Verdict awarding ASI \$195,175 against the Sage Defendants. The jury verdict was closer to the Offer of Judgment made by the Sage Defendants than it was to the position advocated by ASI at trial. As compared to ASI, the Sage Defendants should be considered the prevailing party. A true and correct copy of the Offer of Judgment filed by the Sage Defendants is attached hereto.
- H. The case was desirable because it involved challenging litigation.
- I. I have had a long relationship with Farmers Insurance and State Farm Insurance.
- J. I know of several commercial litigation cases in which attorney fees have been awarded to experienced trial lawyers in amounts exceeding \$250/hour.

- K. I have not included costs of automated legal research in the claim.
- L. The primary factor favoring an award of attorney fees at a rate of at least \$250/hour in this case is to place the Sage Defendants on equal footing with ASI. In the event it is determined that both the Sage Defendants and ASI were prevailing parties and each entitled to attorney fees, the Sage Defendants should not be disadvantaged in the award because their attorney charged a rate below the prevailing rate for like work by like attorneys. The award should be based on the same hourly rate so that the award is comparable.
5. Based on the IRCP 54(e)(3) factors a reasonable attorney fee for the defense of the Sage Defendants is \$297,825.50 plus such additional attorney fees as are incurred by the Sage Defendants through post-trial motions.
6. The actual attorney fees incurred by the Sage Defendants for their defense is \$207,713 plus such additional attorney fees as are incurred by the Sage Defendants through post-trial motions.
7. The Sage Defendants incurred the following costs as a matter of right pursuant to IRCP 54(d)(1)(C): \$20,994.93.
8. The Sage Defendants incurred the following reasonable costs: \$75,965.70.
9. The expert witness fees for Monte Dalrymple in the amount of \$8,397.73 were incurred out of necessity and were reasonable in amount because the Sage Defendants were required to defend against the Trade Secret allegations made by ASI. The Sage Defendants retained Monte Dalrymple jointly with Zilog to keep the expense down. Mr. Dalrymple was well qualified to evaluate the Trade Secret allegations made by ASI and determined that there was no credible evidence to support ASI's claim that Roberts, Yearsley and Tiffany stole or otherwise converted ASI's trade secrets and transferred the trade secrets to Zilog.

10. The expert witness fees for Charles Donohoe in the amount of \$21,146.52 were incurred out of necessity and were reasonable in amount because the Sage Defendants were required to defend against the expert opinions offered by ASI's expert Stephen Holland to the effect that the provisions of the ECA were reasonable, standard in the industry and enforceable. Mr. Donohoe was well qualified to counter these claims by ASI's expert. Ultimately, it was not necessary for him to testify because ASI dismissed all but its breach of the non-competition provisions of the ECA to avoid a directed verdict.
11. The expert witness fees for Dennis Reinstein in the amount of \$27,760.75 were incurred out of necessity and were reasonable in amount because the Sage Defendants were required to defend against the expert opinions offered by ASI's economic expert, Richard Hoffman, who testified that ASI's damages were \$1,025,087. Mr. Reinstein was well qualified to evaluate the damage claim by ASI and his opinion that the lost profits were \$120,630 was much closer to the special verdict returned by the jury than Mr. Hoffman's \$1,025,087.
12. The expert witness fees for John Janzen in the amount of \$1,200 were incurred out of necessity and were reasonable in amount because the Sage Defendants were required to defend against the expert opinions offered by ASI's expert, Stephen Holland , who opined regarding the prevailing wage rates for work performed by design engineers. Mr. Janzen was well qualified to evaluate the prevailing wage rates for design engineers with similar training and experience to that of the Roberts, Yearsley and Tiffany.

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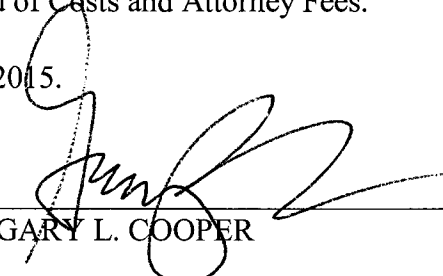
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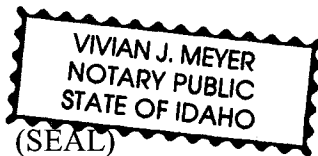
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13. Attached are true and correct copies of invoices from M&M Court Reporting Services, Inc., Ron Schilling, Monte Dalrymple, Charles Donohoe, John Janzen, Dennis Reinstein, and Susan M. Wolf. The invoices are the basis for the costs requested in the Sage Defendants Memorandum in Support of an Award of Costs and Attorney Fees.

DATED this 3 day of February, 2015.

  
\_\_\_\_\_  
GARY L. COOPER

SUBSCRIBED AND SWORN to before me this 3 day of February, 2015



  
\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO

Residing at Pocatello

My commission expires: 8-9-2016

### CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of February, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702


☒ U.S. mail  
☐ Express mail  
☐ Hand delivery  
☒ Electronic delivery: [jzarian@parsonsbehle.com](mailto:jzarian@parsonsbehle.com)  
[kluvai@parsonsBehle.com](mailto:kluvai@parsonsBehle.com)  
☐ Fax: 208-562-4901

Chad Bernards  
Stewart Taylor & Morris, PLLC  
12550 W Explorer Drive, Suite 100  
Boise, ID 83713

☒ U.S. mail  
☐ Express mail  
☐ Hand delivery  
☒ Electronic delivery [dbower@stm-law.com](mailto:dbower@stm-law.com)  
☐ Fax: 208-345-4461

Gerald T. Husch  
Moffatt Thomas Barrett Rock & Fields  
101 S. Capitol Blvd., 10<sup>th</sup> Floor  
P.O. Box 829  
Boise, ID 83701

☒ U.S. mail  
☐ Express mail  
☐ Hand delivery  
☒ Electronic delivery [gth@moffatt.com](mailto:gth@moffatt.com)  
☐ Fax: 208-385-5384

  
\_\_\_\_\_  
GARY L. COOPER





# Summary Fee Transaction File List

Cooper & Larsen, Chartered

		Hours to Bill	Amount	
Subtotal for Timekeeper 1	Billable	<u>500.85</u>	<u>80,136.00</u>	Gary L. Cooper
Subtotal for Timekeeper 4	Billable	<u>90.10</u>	<u>11,713.00</u>	JD Oborn
Subtotal for Timekeeper 6	Billable	<u>9.10</u>	<u>1,183.00</u>	Anson Call
Subtotal for Timekeeper 7	Billable	<u>16.00</u>	<u>1,280.00</u>	Barbie Snell
Subtotal for Timekeeper 8	Billable	<u>15.40</u>	<u>1,232.00</u>	Vivian Meyer
Subtotal for Timekeeper 10	Billable	<u>33.60</u>	<u>5,376.00</u>	Cary Colaiani
<b>Total for Client ID 12119.00</b>	Billable	<u>665.05</u>	<u>100,920.00</u>	Farmers Insurance (Shoquist) American Semiconductor v Sage Silicone Solutions
Subtotal for Timekeeper 1	Billable	<u>500.40</u>	<u>80,064.00</u>	Gary L. Cooper
Subtotal for Timekeeper 4	Billable	<u>89.80</u>	<u>11,674.00</u>	JD Oborn
Subtotal for Timekeeper 6	Billable	<u>9.10</u>	<u>1,183.00</u>	Anson Call
Subtotal for Timekeeper 7	Billable	<u>15.95</u>	<u>1,276.00</u>	Barbie Snell
Subtotal for Timekeeper 8	Billable	<u>15.40</u>	<u>1,232.00</u>	Vivian Meyer
Subtotal for Timekeeper 10	Billable	<u>33.40</u>	<u>5,344.00</u>	Cary Colaiani
<b>Total for Client ID 12119.01</b>	Billable	<u>664.05</u>	<u>100,773.00</u>	State Farm Insurance (Trent) American Semiconductor v Sage Silicone Solutions
<b>GRAND TOTALS</b>				
	Billable	<u>1,329.10</u>	<u>201,693.00</u>	

001651



Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	2/10/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Correspondence to attorney Metcalfe re: meeting with him and clients/insureds to discuss case
12119	2/23/2012	GLC	0	12	\$ 160.00	0	1.9	1.9	\$ 304.00	Travel to Nampa to meet with clients/insureds (split 50% with another case)
12119	2/23/2012	GLC	0	1	\$ 160.00	0	2.5	2.5	\$ 400.00	Conference with clients/insureds and personal attorney
12119	2/24/2012	GLC	0	12	\$ 160.00	0	1.9	1.9	\$ 304.00	Travel to Pocatello from Nampa (split 50% with another case)
12119	2/29/2012	GLC	0	1	\$ 160.00	0	0.3	0.3	\$ 48.00	Telephone conference with American Semiconductor attorney Steve Adams re: protective order vs motion to compel (lengthy conversation re: documents needed for evaluation)
12119	3/7/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Email to Zilog corporate counsel Eaton re: motion to compel and confidentiality agreement
12119	3/8/2012	GLC	0	10	\$ 160.00	0	5.6	5.6	\$ 896.00	Review and analyze over 1000 pages of documents received from clients
12119	3/9/2012	GLC	0	1	\$ 160.00	0	1.1	1.1	\$ 176.00	Telephone conference with Mark Shoquist to discuss case, strategy and case management agreement
12119	3/9/2012	GLC	0	6	\$ 160.00	0	2.7	2.7	\$ 432.00	Prepare case management agreement with legal analysis of claims and defenses
12119	3/10/2012	GLC	0	6	\$ 160.00	0	3.1	3.1	\$ 496.00	Prepare written discovery to American Semiconductor (34 interrogatories, 23 requests for production and 1 requests for admissions - this is not form discovery: was developed specifically for the facts of this case and is case specific except for the first 5 interrogatories)
12119	3/10/2012	GLC	0	6	\$ 160.00	0	0.7	0.7	\$ 112.00	Prepare stipulation and protective order for production of trade secret and confidential information (8 pages)
12119	3/12/2012	BS	0	6	\$ 80.00	0	0.3	0.3	\$ 24.00	Draft stipulated protective order re: discovery (11 pages)
12119	3/16/2012	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Receive and respond to emails from attorneys for American Semiconductor re: protective order and stipulation
12119	4/6/2012	GLC	0	1	\$ 160.00	0	0.3	0.3	\$ 48.00	Telephone conference with Steve Adams re: extension to answer discovery and continue date for motion to compel
12119	4/13/2012	GLC	0	1	\$ 160.00	0	0.3	0.3	\$ 48.00	Telephone conference with Dan Eaton re: effect of my stipulating to extend the time within which AS can serve Zilog and willingness to sign affidavit about proprietary and confidential nature of the records subject to motion to compel (lengthy)
12119	4/18/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Communication with Dan Eaton at Zilog in issues involving stipulation proposed by American Semiconductor
12119	4/18/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Steve Adams re: stipulation to vacate hearing on motion to compel and re-schedule
12119	4/18/2012	GLC	0	1	\$ 160.00	0	0.1	0.1	\$ 16.00	Prepare email to clients explaining background on stipulation
12119	4/25/2012	GLC	0	9	\$ 160.00	0	2.2	2.2	\$ 352.00	Prepare for deposition of Kabe (review and analyze approximately 200 pages of documentary evidence consisting of 41 deposition exhibits)
12119	5/1/2012	GLC	0	1	\$ 160.00	0	0.35	0.35	\$ 56.00	Telephone conference with Dave Roberts re: discovery responses and affidavit for motion to compel
12119	5/14/2012	GLC	0	1	\$ 160.00	0	0.35	0.35	\$ 56.00	2 Telephone conferences with Dave Eaton re: Zilog affidavit and opposition to motion to compel
12119	5/14/2012	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Review and analyze two emails from Eaton with background information for affidavit
12119	5/14/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	2 telephone conferences with Dave Roberts to discuss information for affidavit in opposition to motion to compel
12119	5/14/2012	GLC	0	10	\$ 160.00	0	0.45	0.45	\$ 72.00	Review and analyze two emails from Dave Roberts re: information for affidavits in opposition to motion to compel
12119	5/14/2012	GLC	0	6	\$ 160.00	0	0.6	0.6	\$ 96.00	Prepare affidavit of Steve Darrough from Zilog in opposition to motion to compel
12119	5/14/2012	GLC	0	6	\$ 160.00	0	0.75	0.75	\$ 120.00	Prepare affidavit of Dave Roberts in opposition to motion to compel
12119	5/14/2012	GLC	0	6	\$ 160.00	0	0.15	0.15	\$ 24.00	Revise Darrough affidavit per phone call from Dan Eaton, general counsel for Zilog
12119	5/15/2012	GLC	0	6	\$ 160.00	0	0.4	0.4	\$ 64.00	Finalize affidavits of Roberts and Darrough
12119	5/24/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Muss Metcalf re: encrypted emails
12119	5/24/2012	GLC	0	9	\$ 160.00	0	0.8	0.8	\$ 128.00	Prepare for oral argument on motion to compel

12-119 ASI v Sage  
Attorney Fees report

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	5/25/2012	GLC	0	12	\$ 160.00	0	7.55	7.55	\$ 1,208.00	Travel to and from Boise for hearing on motion to compel
12119	5/25/2012	GLC	0	12	\$ 160.00	0	0.55	0.55	\$ 88.00	Conduct pre-hearing and post-hearing conference with clients Yearsley and Roberts
12119	5/25/2012	GLC	0	12	\$ 160.00	0	1.15	1.15	\$ 184.00	Attend hearing before Judge Neville in Boise
12119	5/29/2012	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Mark Shoquist re: outcome of motion to compel, analysis of invoices, possible offer of judgment, measure of damages scenarios and web site liability (very lengthy conversation)
12119	5/30/2012	GLC	0	1	\$ 160.00	0	0.15	0.15	\$ 24.00	Email to Dan Eaton re: motion to compel outcome and participation in crafting protective order
12119	6/4/2012	GLC	0	1	\$ 160.00	0	1	1	\$ 160.00	Telephone conference with Metcalf, Lloyd, Roberts, Tiffany and Yearsley to discuss production of invoices and discussion about meaning (lengthy conversation)
12119	6/11/2012	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Barry Trent at State Farm re: bringing him up to speed on background of claim
12119	6/18/2012	GLC	0	10	\$ 160.00	0	0.2	0.2	\$ 32.00	Review and analyze letter from Hanson, attorney for ASI requesting production of certain information previously withheld
12119	6/18/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Correspondence to clients requesting input for response to Hanson
12119	6/18/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Correspondence to Zilog's attorney re: disclosure of names and email addresses of Zilog employees
12119	6/25/2012	GLC	0	6	\$ 160.00	0	0.5	0.5	\$ 80.00	Prepare and file motion for protective order with proposed order
12119	7/12/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with John Zarian re: stipulation, vacating hearing and his view of case
12119	7/16/2012	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Barry Trent to prepare Phase 1 report
12119	7/26/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Dan Eaton re: protective order
12119	8/9/2012	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Review and analyze proposed protective order from Zarian
12119	8/9/2012	GLC	0	1	\$ 160.00	0	0.6	0.6	\$ 96.00	Telephone conference with Zarian to discuss revisions (very lengthy)
12119	8/9/2012	GLC	0	6	\$ 160.00	0	0.6	0.6	\$ 96.00	Prepare revisions to protective order
12119	8/9/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Email to clients and attorney for Zilog explaining revisions and protective order and inviting revisions
12119	8/16/2012	GLC	0	1	\$ 160.00	0	1	1	\$ 160.00	Telephone conference with Steve Thomas and Gerry Hush, attorneys for Zilog re: background and protective order (very lengthy conversation about a variety of possible variations of protective order and background facts)
12119	8/17/2012	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Email to Dave Roberts re: protective order requesting some specific information for inclusion in affidavit in support of restrictive protective order
12119	8/31/2012	GLC	0	6	\$ 160.00	0	3.2	3.2	\$ 512.00	Prepare memorandum in support of motion for protective order (10 pages)
12119	8/31/2012	GLC	0	6	\$ 160.00	0	0.8	0.8	\$ 128.00	Finalize proposed protective order with recommendations by attorney Zilog
12119	8/31/2012	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Review and analyze ASI's opposition to Defendant's motion for protective order
12119	8/31/2012	VM	0	6	\$ 80.00	0	1	1	\$ 80.00	Finalize memorandum in support and proposed protective order (file memorandum by fax and transmit to client and counsel)
12119	10/2/2012	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with John Zarian to discuss possible compromise on protective order
12119	10/2/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Email to Steve Thomas and Gerry Hush re: Zilog position
12119	10/3/2012	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Review issues with attorney for Zilog re: issues on protective order
12119	10/4/2012	GLC	0	9	\$ 160.00	0	2.4	2.4	\$ 384.00	Prepare for hearing on motion for protective order (review affidavit of Roberts - 5 pages + 22 page attachment; Affidavit of Darrough - 4 pages; Motion for prior order - 5 pages; ASI's objection - 12 pages; Supplemental objection - 12 pages; Defense memorandum and amended protective order - 18 pages; Second supplemental objection - 5 pages; Emails with Zilog's attorney re: points of contention)
12119	10/5/2012	GLC	0	20	\$ 160.00	0	6.8	6.8	\$ 1,088.00	Travel to and from Boise for hearing on motion for protective order

12-119 ASI v Sage  
Attorney Fees report

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	10/5/2012	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Conference with Roberts and Tiffany before and after hearing to discuss strategy
12119	10/5/2012	GLC	0	12	\$ 160.00	0	1.2	1.2	\$ 192.00	Attend hearing on motion for protective order in Boise
12119	10/8/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Emails with attorney for Zilog re: scope of Judge's bench order
12119	10/8/2012	GLC	0	6	\$ 160.00	0	0.6	0.6	\$ 96.00	Prepare proposed order on motion to compel
12119	10/8/2012	GLC	0	6	\$ 160.00	0	0.4	0.4	\$ 64.00	Prepare revised Attorney Eyes Only provision for protective order
12119	10/14/2012	GLC	0	6	\$ 160.00	0	0.6	0.6	\$ 96.00	Prepare proposed compromise Attorney Eyes Only provision for protective order considering ASI's proposal and the Court's comments at motion for protective order
12119	10/15/2012	GLC	0	6	\$ 160.00	0	1.4	1.4	\$ 224.00	Prepare phase 1 report
12119	10/15/2012	GLC	0	6	\$ 160.00	0	0.2	0.2	\$ 32.00	Revise Attorney Eyes Only provision per comments from Husch and Eaton
12119	11/6/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Zarian re: protective order revisions
12119	11/7/2012	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Review and analyze Zarian's revisions to AEO provision
12119	11/7/2012	GLC	0	1	\$ 160.00	0	0.35	0.35	\$ 56.00	Telephone conference with Zarian to negotiate the AEO provision (very lengthy discussion about concept, ideas and compromises)
12119	11/7/2012	GLC	0	6	\$ 160.00	0	0.25	0.25	\$ 40.00	Prepare revision to AEO provision
12119	11/7/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Prepare email to Zilog lawyers and clients re: proposed revision to AEO provision
12119	11/8/2012	GLC	0	1	\$ 160.00	0	0.6	0.6	\$ 96.00	Communications with ASI attorney, Zilog attorney and insureds re: language for protective order
12119	11/9/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Emails with attorney for Zilog re: compromise on protective order language
12119	11/9/2012	GLC	0	1	\$ 160.00	0	0.15	0.15	\$ 24.00	Emails with Zarian, ASI's attorney re: compromise on protective order language
12119	12/7/2012	GLC	0	12	\$ 160.00	0	0.45	0.45	\$ 72.00	Telephonic hearing on motion for protective order
12119	12/15/2012	GLC	0	10	\$ 160.00	0	0.2	0.2	\$ 32.00	Review and analyze email from Mark Shoquist re: reasonable amount of disgorgement of net profits
12119	12/15/2012	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Email to Mark Shoquist re: response to billed vs collected from Zilog
12119	1/11/2013	GLC	0	9	\$ 160.00	0	0.8	0.8	\$ 128.00	Prepare for hearing on protective order
12119	1/11/2013	GLC	0	12	\$ 160.00	0	0.6	0.6	\$ 96.00	Attend hearing on protective order
12119	1/12/2013	GLC	0	6	\$ 160.00	0	1.4	1.4	\$ 224.00	Prepare for final protective order for submission to counsel and court from various drafts of the parties
12119	1/12/2013	GLC	0	6	\$ 160.00	0	1.2	1.2	\$ 192.00	Begin preparation of marking un-redacted confidential documents for submission to Zilog for approval
12119	1/30/2013	GLC	0	6	\$ 160.00	0	1.6	1.6	\$ 256.00	Finalize production of un-redacted documents to Zilog for help in making documents as confidential or confidential-attorney eyes only (approximately 200 pages)
12119	2/13/2013	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Dan Eaton at Zilog re: redactions and confidential vs confidential/AEO (lengthy discussion of specific documents and decisions)
12119	2/14/2013	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare amended discovery responses to provide Bates numbered documents
12119	2/14/2013	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare supplemental discovery responses to provide confidential and attorney eyes only documents
12119	3/5/2013	GLC	0	10	\$ 160.00	0	0.2	0.2	\$ 32.00	Review and analyze ASI's request that Sage accept service of subpoena on Zilog
12119	3/5/2013	GLC	0	6	\$ 160.00	0	0.2	0.2	\$ 32.00	Respond to request that Sage accept service of subrogation on Zilog
12119	3/11/2013	GLC	0	1	\$ 160.00	0	0.7	0.7	\$ 112.00	Telephone conference with Yearsley, Roberts, Tiffany and Metcalf to respond to meet and confer letter from Zarian - very lengthy conversation
12119	3/13/2013	GLC	0	6	\$ 160.00	0	0.9	0.9	\$ 144.00	Respond to six page meet and confer letter - response of 3 pages
12119	3/18/2013	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Telephone conference with Mark Shoquist at Farmers re: status of protective order and production of documents
12119	3/21/2013	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare supplemental discovery responses to provide attorney eyes only documents
12119	3/22/2013	GLC	0	12	\$ 160.00	0	0.6	0.6	\$ 96.00	Telephonic status conference with Judge Neville and counsel
12119	4/5/2013	GLC	0	1	\$ 160.00	0	0.8	0.8	\$ 128.00	Telephone conference with Yearsley, Roberts, Tiffany and Metcalf to respond to meet and confer letter from Zarian (very lengthy meeting)

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Attorney Fees report

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	4/5/2013	GLC	0	1	\$ 160.00	0	0.3	0.3	\$ 48.00	Telephone conference with Zarian re: discrepancy between our production and original production (lengthy discussion comparing documents)
12119	4/12/2013	GLC	0	10	\$ 160.00	0	2.8	2.8	\$ 448.00	Review and analyze approximately 750 documents to be produced in a supplemental disclosure
12119	4/12/2013	GLC	0	6	\$ 160.00	0	1.7	1.7	\$ 272.00	Prepare response to meet and confer letter (5 pages)
12119	4/12/2013	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Correspondence to attorney Hush for Zilog to re-evaluate AEO designations
12119	4/12/2013	BS	0	10	\$ 80.00	0	1	1	\$ 80.00	Review and analyze various documents provided by insureds
12119	4/18/2013	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare supplemental discovery responses to provide attachment for Bates #73
12119	5/3/2013	GLC	0	12	\$ 160.00	0	0.4	0.4	\$ 64.00	Attend status conference with Judge Neville and Zarian
12119	5/3/2013	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Review and analyze meet and confer letter from Zarian (2 pages)
12119	5/6/2013	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Barry Trent at State Farm re: update of status
12119	5/7/2013	BS	0	15	\$ 80.00	0	1.6	1.6	\$ 128.00	Organize emails and documents received from Gyle Yearsley (1300+ pages)
12119	5/10/2013	GLC	0	1	\$ 160.00	0	0.6	0.6	\$ 96.00	Telephone conference with Yearsly, Roberts, Tiffany and Metcalf
12119	5/24/2013	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Mark Shoquist re: status and update
12119	5/24/2013	GLC	0	6	\$ 160.00	0	0.4	0.4	\$ 64.00	Prepare response to meet and confer letter
12119	6/7/2013	GLC	0	12	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephonic status conference re: joinder of Zilog and scheduling motion to compel
12119	6/9/2013	GLC	0	6	\$ 160.00	0	0.4	0.4	\$ 64.00	Prepare Phase 2 report to State Farm
12119	6/9/2013	GLC	0	6	\$ 160.00	0	0.4	0.4	\$ 64.00	Prepare updated report to Farmers
12119	6/9/2013	GLC	0	10	\$ 160.00	0	0.2	0.2	\$ 32.00	Review and analyze settlement demand from ASI to Zilog
12119	6/11/2013	VM	0	6	\$ 80.00	0	6	6	\$ 480.00	Comparison of previously produced documents with documents received on 5-6-13 for duplication
12119	6/12/2013	VM	0	6	\$ 80.00	0	6	6	\$ 480.00	Continue comparison of previously produced documents with documents received on 5-6-13 for duplication
12119	6/19/2013	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Telephone conference with Cheryl at Moffatt Thomas re: stipulation extending time to serve Zilog
12119	7/3/2013	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Barry Trent re: tender of defense
12119	7/8/2013	VM	0	10	\$ 80.00	0	1	1	\$ 80.00	Compare documents produced in May with prior documents produced as discovery
12119	7/10/2013	BS	0	10	\$ 80.00	0	0.2	0.2	\$ 16.00	Compare amended complaint and second amended complaint to determine differences
12119	7/10/2013	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to all insureds and adjusters identifying difference in amended complaint and second amended complaint
12119	7/11/2013	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Barry Trent re: updated status report
12119	8/2/2013	VM	0	10	\$ 80.00	0	3	3	\$ 240.00	Compare documents produced in May with prior documents produced as discovery
12119	8/24/2013	GLC	0	10	\$ 160.00	0	7.6	7.6	\$ 1,216.00	Review and analyze nearly 5000 new documents discovered on Yearsley's computer
12119	8/25/2013	GLC	0	10	\$ 160.00	0	4.8	4.8	\$ 768.00	Complete reading nearly 5000 new documents discovered on Yearsley's computer
12119	8/25/2013	GLC	0	10	\$ 160.00	0	0.6	0.6	\$ 96.00	Review and analyze ASI motion to compel and supporting memorandum (15 pages)
12119	8/25/2013	GLC	0	10	\$ 160.00	0	2.2	2.2	\$ 352.00	Review and analyze Defendant's discovery responses (approximately 3000 pages of discovery)
12119	8/26/2013	GLC	0	6	\$ 160.00	0	5.8	5.8	\$ 928.00	Prepare responsive memorandum re: ASI motion to compel
12119	8/28/2013	GLC	0	6	\$ 160.00	0	0.6	0.6	\$ 96.00	Prepare affidavit in opposition to motion to compel/enforce
12119	8/28/2013	GLC	0	6	\$ 160.00	0	0.6	0.6	\$ 96.00	Finalize memorandum in opposition to motion to compel/enforce
12119	8/28/2013	VM	0	6	\$ 80.00	0	2	2	\$ 160.00	Prepare 5th supplemental discovery responses, response to motion to compel with supporting affidavit of Gary L Cooper and attachments
12119	8/29/2013	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Russ Metcalf re: tender of defense conversation with Gary Hush and discussion about what to do
12119	9/4/2013	VM	0	6	\$ 80.00	0	3.6	3.6	\$ 288.00	Prepare 6th supplemental discovery responses with Bates numbering, 5 CD-Rs, discovery responses and notice of service for court

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Attorney Fees report

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	9/6/2013	GLC	0	9	\$ 160.00	0	2.2	2.2	\$ 352.00	Prepare for oral argument on motion to compel
12119	9/6/2013	GLC	0	12	\$ 160.00	0	1.6	1.6	\$ 256.00	Attend oral argument on motion to compel
12119	9/6/2013	GLC	0	12	\$ 160.00	0	3.8	3.8	\$ 608.00	Travel from Boise to Pocatello after hearings on motion to compel
12119	10/2/2013	GLC	0	6	\$ 160.00	0	0.4	0.4	\$ 64.00	Prepare supplemental discovery responses with tax documents attached for Yearsley, Roberts and Tiffany
12119	10/8/2013	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Correspondence to Gerald Husch providing State Farm policy he requested
12119	10/8/2013	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare 7th supplemental discovery responses
12119	10/17/2013	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to adjuster and insured re: motion to compel against Zilog reset to 11-15-13
12119	10/21/2013	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Barry Trent re: status update
12119	11/25/2013	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Correspondence to John Zarian re: Gary is not available for depositions in December and they must be rescheduled for January
12119	12/24/2013	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Correspondence to insureds re: Zilog's supplemental discovery responses plus disk and Zilog's response to ASI's meet and confer letter
12119	1/2/2014	GLC	0	10	\$ 160.00	0	0.6	0.6	\$ 96.00	Review and analyze motion to compel and supporting affidavits (approximately 30 pages)
12119	1/2/2014	GLC	0	6	\$ 160.00	0	0.8	0.8	\$ 128.00	Prepare affidavit in opposition to motion to compel
12119	1/10/2014	GLC	0	12	\$ 160.00	0	1.4	1.4	\$ 224.00	Attend telephonic hearing on 3 motions to compel
12119	1/14/2014	GLC	0	10	\$ 160.00	0	0.8	0.8	\$ 128.00	Review and analyze Zarian's claim that Sage did not produce 5000 pages of disputed documents - required to review several hundred pages of documents and correspondence re: productions
12119	1/19/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive to and from Boise for meeting (apportioned 50% with another case)
12119	1/19/2014	GLC	0	12	\$ 160.00	0	2.4	2.4	\$ 384.00	Meeting with Dave Roberts, Gyle Yearsley and Bill Tiffany re: 28 categories in 30(b)(6) deposition notice and discuss scope of knowledge and best person to act as designee for each category
12119	1/20/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive to and from Boise for mediation (apportioned 50% with another case)
12119	1/22/2014	BS	0	6	\$ 80.00	0	0.4	0.4	\$ 32.00	Prepare designation of deponents for Sage Silicon Solutions for 30(b)(6) depositions
12119	1/29/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Finalize deposition designation - review with Gary
12119	1/30/2014	GLC	0	6	\$ 160.00	0	0.4	0.4	\$ 64.00	Prepare 30(b)(6) designation and objections to 27 areas of inquiry
12119	2/6/2014	GLC	0	12	\$ 160.00	0	3.4	3.4	\$ 544.00	Drive to Boise to meet with clients re: preparation for 30(b)(6) depositions
12119	2/7/2014	GLC	0	12	\$ 160.00	0	6.2	6.2	\$ 992.00	Meet with Dave, Gyle and Bill to prepare for 30(b)(6) depositions
12119	2/7/2014	GLC	0	12	\$ 160.00	0	3.4	3.4	\$ 544.00	Drive to Pocatello following deposition prep in Boise
12119	2/10/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Drive to Boise for depositions
12119	2/11/2014	GLC	0	12	\$ 160.00	0	9.6	9.6	\$ 1,536.00	Attend 30(b)(6) depositions of Sage (Roberts and Yearsley)
12119	2/12/2014	GLC	0	12	\$ 160.00	0	2.6	2.6	\$ 416.00	Attend 30(b)(6) depositions of Sage (Tiffany)
12119	2/12/2014	GLC	0	12	\$ 160.00	0	6.3	6.3	\$ 1,008.00	Attend 30(b)(6) depositions of Zilog (3 witnesses - not completed, vacated to later date)
12119	2/13/2014	GLC	0	12	\$ 160.00	0	3.4	3.4	\$ 544.00	Drive to Pocatello after depositions in Boise
12119	2/27/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Correspondence to Kennedy Luvai requesting copies of all documents obtained by subpoena served on Cadence Design Systems, Inc.
12119	3/3/2014	GLC	0	12	\$ 160.00	0	0.8	0.8	\$ 128.00	Travel from Salt Lake City to Boise for continuation of Zilog 30(b)(6) deposition (billed at 50% - travel time 1.6 hours)
12119	3/4/2014	GLC	0	12	\$ 160.00	0	3.4	3.4	\$ 544.00	Attend Zilog 30(b)(6) deposition in Boise
12119	3/4/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive to Pocatello after depositions
12119	3/5/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Barry Trent re: updated budget and status
12119	3/6/2014	GLC	0	12	\$ 160.00	0	0.8	0.8	\$ 128.00	Attend telephonic status conference, trial scheduling conference and discussion of issues to be resolved
12119	3/11/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive to Boise for depositions
12119	3/12/2014	GLC	0	12	\$ 160.00	0	6.2	6.2	\$ 992.00	Attend depositions of 3 Zilog employees
12119	3/13/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Respond to email from Bill Tiffany re: what is mediation



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Attorney Fees report

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	3/14/2014	GLC	0	12	\$ 160.00	0	4.1	4.1	\$ 656.00	Attend joint defense meeting with Hush, Eaton and others from Zilog with Cooper, Roberts, Yearsley and Tiffany from ASI
12119	3/14/2014	GLC	0	12	\$ 160.00	0	3.4	3.4	\$ 544.00	Drive from Boise to Pocatello after depositions and meetings
12119	3/20/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Receive and review email from Roberts re: subpoenas
12119	3/20/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Correspondence to Kennedy Luvai re: no further depositions of clients, dates for ASI depositions and upcoming deposition dates
12119	3/25/2014	BS	0	10	\$ 80.00	0	0.2	0.2	\$ 16.00	Receive and review amended notice of deposition of Lloyd and Perryman - email to clients re: same
12119	3/25/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to clients re: Plaintiff's second set of discovery to Sage
12119	3/28/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Dave Roberts re: loyalty of Perryman & Lloyd and whether defense would make sense
12119	3/28/2014	GLC	0	1	\$ 160.00	0	0.3	0.3	\$ 48.00	Telephone conference with Mark Shoquist re: update on status and defense of Perryman and Lloyd
12119	3/29/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Receive and review documents from Gyle Yearsley re: answers to second set of discovery
12119	3/29/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Correspondence to Kennedy Luvia requesting copies of all documents received pursuant to subpoenas to Sean Beck, Alan Shaw and Sonia Daley
12119	4/1/2014	JDO	0	10	\$ 130.00	0	1.1	1.1	\$ 143.00	Review and analyze 30(b)(6) deposition scope and requirements and whether a 30(b)(6) deponent can be re-deposed as a fact witness when such inquiries were made as part of the 30(b)(6) deposition
12119	4/1/2014	GLC	0	9	\$ 160.00	0	4.7	4.7	\$ 752.00	Prepare for deposition preparation meeting with Lloyd and Parryman - review 70 deposition exhibits (approximately 450 pages)
12119	4/1/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive to Boise to prepare Lloyd and Perryman for depositions
12119	4/2/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Lloyd re: rejection of defense by Farmers
12119	4/2/2014	GLC	0	9	\$ 160.00	0	5.1	5.1	\$ 816.00	Prepare for deposition preparation meeting with Parryman - review 77 deposition exhibits (approximately 500 pages)
12119	4/2/2014	GLC	0	9	\$ 160.00	0	4.4	4.4	\$ 704.00	Prepare Parryman for deposition
12119	4/2/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Meeting with Zilog lawyers Hush and Eaton re: objections to proposed scheduling order
12119	4/3/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Boise to Pocatello after deposition preparation meeting
12119	4/4/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Parryman re: terms of employment confidentiality agreement
12119	4/4/2014	GLC	0	10	\$ 160.00	0	3.4	3.4	\$ 544.00	Review and analyze Volume 1 of Zilog production (approximately 1000 pages)
12119	4/4/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	2 Telephone conferences with Hush and Zarian re: rescheduling Lloyd and Parryman depositions
12119	4/4/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Parryman re: rescheduling depositions
12119	4/5/2014	GLC	0	10	\$ 160.00	0	5.6	5.6	\$ 896.00	Review and analyze Volumes 2 and 3 of records produced by Zilog (in excess of 2000 pages of documents)
12119	4/7/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Evelyn Perryman providing 2nd amended notice of deposition and 2nd amended subpoena
12119	4/7/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to adjusters and insured re: deposition of Evelyn Perryman and Russ Lloyd on May 5, 2014
12119	4/8/2014	GLC	0	10	\$ 160.00	0	0.6	0.6	\$ 96.00	Review and analyze 9 months of phone bills for production in response to supplemental discovery requests (approximately 100 pages)
12119	4/11/2014	GLC	0	10	\$ 160.00	0	0.8	0.8	\$ 128.00	Review and analyze damage interrogatory response (11 pages)
12119	4/17/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare supplemental discovery responses to provide Sage 2013 tax return and individual W-2
12119	4/17/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare response to Plaintiff's second set of interrogatories
12119	4/17/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare response to Plaintiff's second set of requests for production
12119	4/24/2014	GLC	0	12	\$ 160.00	0	3	3	\$ 480.00	Drive to Boise for Evelyn Perryman's deposition
12119	4/24/2014	GLC	0	9	\$ 160.00	0	4.6	4.6	\$ 736.00	Deposition preparation of Evelyn Perryman
12119	4/24/2014	GLC	0	12	\$ 160.00	0	3.1	3.1	\$ 496.00	Drive from Boise to Pocatello

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Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	4/25/2014	GLC	0	6	\$ 160.00	0	3	3	\$ 480.00	Prepare response to motion to compel individual depositions of Roberts, Yearsley and Tiffany
12119	4/25/2014	JDO	0	6	\$ 130.00	0	0.2	0.2	\$ 26.00	Prepare affidavit of Gary L Cooper in opposition to motion to compel
12119	4/30/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insureds and adjuster re: motion and memorandum to compel individual depositions of Yearsley, Roberts and Tiffany with our opposition to said motion
12119	4/30/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insureds and adjuster re: ASI's response to Zilog's request for admission and ASI response to Zilog's 2nd, 3rd and 4th sets of discovery
12119	5/1/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email documents to Dave Roberts per his request
12119	5/1/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Send email copies of all depositions to Russ Lloyd's attorney Scott Escujuri
12119	5/2/2014	GLC	0	12	\$ 160.00	0	6.8	6.8	\$ 1,088.00	Drive to and from Boise for hearing on motion to compel
12119	5/2/2014	GLC	0	12	\$ 160.00	0	1.8	1.8	\$ 288.00	Attend hearing on pending motions before Judge Neville
12119	5/2/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insureds and adjusters re: John Zarian's settlement offer of 5-2-14
12119	5/3/2014	GLC	0	6	\$ 160.00	0	0.4	0.4	\$ 64.00	Review and analyze settlement demand from ASI (3 pages)
12119	5/3/2014	GLC	0	1	\$ 160.00	0	0.3	0.3	\$ 48.00	Email to counsel requesting additional time and information to respond to settlement demand
12119	5/3/2014	GLC	0	1	\$ 160.00	0	1.2	1.2	\$ 192.00	Correspondence to Clients evaluating case and settlement demand (3 pages)
12119	5/3/2014	GLC	0	1	\$ 160.00	0	0.7	0.7	\$ 112.00	Emails with Zarian (x6) re: privacy of settlement demand, scheduling depositions and updating discovery responses
12119	5/4/2014	GLC	0	6	\$ 160.00	0	2.2	2.2	\$ 352.00	Prepare phase 2 amended report for State Farm
12119	5/4/2014	GLC	0	6	\$ 160.00	0	2.5	2.5	\$ 400.00	Prepare updated litigation report for Farmers
12119	5/4/2014	GLC	0	9	\$ 160.00	0	1.8	1.8	\$ 288.00	Prepare for depositions of Perryman and Lloyd (identify and review emails involving Perryman and Lloyd)
12119	5/4/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Drive to Boise for Perryman and Lloyd depositions
12119	5/5/2014	GLC	0	1	\$ 160.00	0	1.2	1.2	\$ 192.00	Conference with Husch and Eaton, counsel for Zilog to discuss defense strategy
12119	5/5/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Attend deposition of Russ Lloyd
12119	5/5/2014	GLC	0	12	\$ 160.00	0	2.8	2.8	\$ 448.00	Attend deposition of Evelyn Perryman
12119	5/5/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Conference with Perryman re: evaluation of deposition
12119	5/5/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Boise to Pocatello
12119	5/6/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Yoest and Trent at State Farm re: status update
12119	5/6/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Shoquist re: status update
12119	5/6/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Luvai (ASI), Husch (Zilog) and Cooper (Sage) re: scheduling stipulation for court and scheduling depositions
12119	5/6/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Husch re: deposition strategy
12119	5/7/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of deposition of Doug Hackler
12119	5/7/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of deposition of Dale Wilson
12119	5/7/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of deposition of Rich Chaney
12119	5/7/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of deposition of Lorelli Hackler
12119	5/7/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Emails to insureds re: deposition preparation and deposition dates
12119	5/8/2014	GLC	0	1	\$ 160.00	0	1.2	1.2	\$ 192.00	Telephone conference with Hush and Eaton (Zilog's attorneys), Gyle Yearsley and Cooper to evaluate and discuss trade secret issues
12119	5/8/2014	GLC	0	1	\$ 160.00	0	0.5	0.5	\$ 80.00	4 Telephone conferences with Zarian and Hush to try to schedule depositions of Sage individuals and ASI individuals
12119	5/11/2014	GLC	0	10	\$ 160.00	0	4.2	4.2	\$ 672.00	Review and analyze 4000 pages of documents to extract significant documents for preparation of Roberts, Yearsley and Tiffany individual depositions
12119	5/12/2014	GLC	0	10	\$ 160.00	0	4.6	4.6	\$ 736.00	Review and analyze 5000 additional pages of documents to extract significant documents for preparation of Roberts, Yearsley and Tiffany individual depositions
12119	5/13/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare third set of discovery to Plaintiff
12119	5/13/2014	GLC	0	12	\$ 160.00	0	0.9	0.9	\$ 144.00	Drive to Boise for deposition prep and depositions (apportioned 50% with another case, billed at 50% - 3.6 total travel time)

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Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	5/13/2014	GLC	0	12	\$ 160.00	0	4.6	4.6	\$ 736.00	Deposition preparation of Gyle Yearsley and David Roberts
12119	5/14/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Telephone conference with each insured re: mediation dates
12119	5/14/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to adjusters and insured re: new deposition schedule
12119	5/14/2014	GLC	0	12	\$ 160.00	0	0.9	0.9	\$ 144.00	Drive to Pocatello after deposition prep and depositions (apportioned 50% with another case, billed at 50% - 3.4 total travel time)
12119	5/14/2014	GLC	0	12	\$ 160.00	0	0.6	0.6	\$ 96.00	Telephone conference with opposing counsel to determine deposition dates for continued Zilog 30(b)(6) depositions, individual deposition of Roberts, Yearsley and Tiffany and depositions of Zilog personnel
12119	5/14/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Deposition preparation of Bill Tiffany
12119	5/20/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to all adjusters and insureds re: order for case management
12119	5/20/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to all counsel re: depositions of Tiffany and Yearsley
12119	5/20/2014	BS	0	6	\$ 80.00	0	0.3	0.3	\$ 24.00	Prepare 4th set of discovery
12119	5/20/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Telephone conference with Bill Tiffany re: deposition
12119	5/20/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Telephone conference with Gyle Yearsley re: deposition
12119	5/20/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to all counsel re: Yearsley and Tiffany depositions
12119	5/27/2014	GLC	0	10	\$ 160.00	0	0.8	0.8	\$ 128.00	Review and analyze American Semiconductor's 8th supplemental production (100 pages of AEO documents)
12119	5/28/2014	GLC	0	10	\$ 160.00	0	3.2	3.2	\$ 512.00	Review approximately 1500 pages of documents produced by ASI to support its claim that Sage misappropriated trade secrets from ASI
12119	5/28/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone with Barry Trent re: representing Sage on its counterclaim and retention of expert
12119	5/28/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone with Mark Shoquist re: representing Sage on its counterclaim and retention of expert
12119	5/28/2014	GLC	0	1	\$ 160.00	0	0.9	0.9	\$ 144.00	Conference with Tiffany, Yearsley and Roberts re: technical discussion of what could be trade secret and how to pursue
12119	5/29/2014	GLC	0	1	\$ 160.00	0	0.6	0.6	\$ 96.00	Telephone with Gerry Husch (Zilog attorney) re: modifying protective order to permit parties to view AEO documents on the ASI design and Zilog design that are at the heart of trade secret claim (very lengthy and technical discussion reviewing P510 83 pages of specifications)
12119	6/2/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Husch re: sanctions against ASI and strategy for obtaining same
12119	6/2/2014	GLC	0	1	\$ 160.00	0	0.8	0.8	\$ 128.00	Lengthy telephone conference with Zilog's Dan Eaton, Zilog's in-house lawyers and Gerry Husch (Zilog's defense counsel) re: 30(b)(6) deposition of ASI, retention of expert and motion to compel on trade secret
12119	6/3/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Shoquist, Trent and insureds re: amended notice of 30(b)(6) depositions of Zilog, Roberts, Yearsley and Tiffany
12119	6/4/2014	GLC	0	1	\$ 160.00	0	0.6	0.6	\$ 96.00	Lengthy conversation with Gerry Husch and Gyle Yearsley re: work done for ASI to determine if argument that assignment of invention provision was overbroad
12119	6/4/2014	ALC	0	5	\$ 160.00	0	2	2	\$ 320.00	Research trade secret and non-compete case laws
12119	6/5/2014	GLC	0	10	\$ 160.00	0	0.2	0.2	\$ 32.00	Review and analyze information about defense expert from Husch
12119	6/5/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Email to adjusters and client re: joint retention of defense expert
12119	6/5/2014	ALC	0	5	\$ 160.00	0	2	2	\$ 320.00	Research trade secret and non-compete cases
12119	6/5/2014	ALC	0	6	\$ 160.00	0	2	2	\$ 320.00	Prepare questions for Defendant's depositions based on review of complaint and trade secret and non-compete case law
12119	6/6/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Correspondence to all insureds and adjusters re: John Zarian's letter of 6-5-14
12119	6/6/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Revise notice of depositions of Rich Chaney, Lorelli Hackler, Dale Wilson and Doug Hackler to conform to new dates agreed upon by counsel
12119	6/7/2014	GLC	0	10	\$ 160.00	0	2.7	2.7	\$ 432.00	Review and analyze specs for SP10 ASIC product (83 pages of technical data)
12119	6/7/2014	GLC	0	10	\$ 160.00	0	7.1	7.1	\$ 1,136.00	Review and analyze literature on microprocessors, block diagrams ASIC products and products similar to SP10 ASIC

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Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	6/7/2014	CBC	0	10	\$ 160.00	0	4	4	\$ 640.00	Review confidentiality agreements, block diagrams re: trade secret claims and claim issues
12119	6/8/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Pocatello to Boise for 30(B)(6) deposition of Zilog
12119	6/9/2014	GLC	0	12	\$ 160.00	0	7.6	7.6	\$ 1,216.00	Attend 30(B)(6) deposition of Zilog (David Staab)
12119	6/9/2014	GLC	0	12	\$ 160.00	0	2.8	2.8	\$ 448.00	Drive from Boise to Pocatello after deposition
12119	6/9/2014	CBC	0	10	\$ 160.00	0	1	1	\$ 160.00	Review emails from clients re: trade secret issues
12119	6/10/2014	GLC	0	10	\$ 160.00	0	2.4	2.4	\$ 384.00	Review and analyze documents produced by Sage for deposition exhibits for deposition of ASI witnesses (approximately 7000 pages)
12119	6/10/2014	GLC	0	10	\$ 160.00	0	3.2	3.2	\$ 512.00	Review and analyze documents produced by Zilog for deposition exhibits for deposition of ASI witnesses (approximately 7000 pages)
12119	6/10/2014	GLC	0	10	\$ 160.00	0	1.2	1.2	\$ 192.00	Review and analyze documents produced by ASI for deposition exhibits for deposition of ASI witnesses (approximately 2000 pages)
12119	6/11/2014	CBC	0	5	\$ 160.00	0	1	1	\$ 160.00	Research trade secret and non-complete laws
12119	6/14/2014	GLC	0	10	\$ 160.00	0	2.6	2.6	\$ 416.00	Review and analyze latest amended discovery responses disclosing trade secret which was allegedly misappropriated by the Sage Defendants (9 pages)
12119	6/14/2014	GLC	0	10	\$ 160.00	0	0.7	0.7	\$ 112.00	Review and analyze lengthy email from William Tiffany re: analysis of latest disclosure of misappropriated trade secret
12119	6/15/2014	GLC	0	9	\$ 160.00	0	7.1	7.1	\$ 1,136.00	Prepare for deposition of ASI people
12119	6/16/2014	GLC	0	9	\$ 160.00	0	4.2	4.2	\$ 672.00	Prepare for deposition of ASI people
12119	6/16/2014	GLC	0	1	\$ 160.00	0	0.5	0.5	\$ 80.00	Telephone conference with Husch and Eaton re: meet and confer with ASI about trade secret issues
12119	6/16/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with expert witness re: budget for services
12119	6/16/2014	CBC	0	10	\$ 160.00	0	0.2	0.2	\$ 32.00	Review and analyze confidentiality agreement
12119	6/16/2014	CBC	0	10	\$ 160.00	0	0.3	0.3	\$ 48.00	Review and analyze second amended complaint
12119	6/16/2014	CBC	0	10	\$ 160.00	0	2.5	2.5	\$ 400.00	Review and analyze affidavit of Kennedy Luvia in support of ASI's opposition to Zilog's motion to compel re: trade secret issues
12119	6/17/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Attend hearing in Soda Springs re: new trial date and other cutoffs
12119	6/17/2014	GLC	0	10	\$ 160.00	0	2.4	2.4	\$ 384.00	Review and analyze H&E Crane documents for Pete Albrecht deposition
12119	6/18/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive to Boise for depositions
12119	6/18/2014	GLC	0	12	\$ 160.00	0	0.4	0.4	\$ 64.00	Meet with Yearsley pre-deposition
12119	6/18/2014	GLC	0	12	\$ 160.00	0	5.2	5.2	\$ 832.00	Attend deposition of Yearsley in Boise
12119	6/18/2014	GLC	0	12	\$ 160.00	0	2.2	2.2	\$ 352.00	Conference with Roberts and Tiffany in Boise
12119	6/19/2014	GLC	0	12	\$ 160.00	0	6.5	6.5	\$ 1,040.00	Attend deposition of Roberts in Boise
12119	6/19/2014	GLC	0	12	\$ 160.00	0	2.4	2.4	\$ 384.00	Conference with Husch, Eaton, Tiffany and Roberts re: ASI deposition preparation
12119	6/19/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insureds and adjusters re: ASI's response to 3rd set of discovery
12119	6/20/2014	GLC	0	12	\$ 160.00	0	4.2	4.2	\$ 672.00	Attend deposition of Tiffany in Boise
12119	6/20/2014	GLC	0	12	\$ 160.00	0	1.2	1.2	\$ 192.00	Conference with Husch to identify documents to be sent to expert witness
12119	6/20/2014	GLC	0	12	\$ 160.00	0	3.1	3.1	\$ 496.00	Drive to Pocatello after depositions in Boise
12119	6/21/2014	CBC	0	9	\$ 160.00	0	4	4	\$ 640.00	Prepare for Doug Hackler, Lorelli Hackler, Dale Wilson and Richard Chaney depositions
12119	6/21/2014	GLC	0	9	\$ 160.00	0	5.2	5.2	\$ 832.00	Begin preparation for depositions of Chaney, L Hackler, D Hackler and Wilson - review 111 deposition exhibits of approximately 850 pages
12119	6/22/2014	GLC	0	9	\$ 160.00	0	8.4	8.4	\$ 1,344.00	Continue preparation for depositions of Chaney, L Hackler, D Hackler and Wilson - review 111 deposition exhibits of approximately 850 pages
12119	6/24/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Husch re: coordinating questions for depositions of ASI representatives
12119	6/24/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Pocatello to Boise for depositions
12119	6/24/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insureds and adjuster re: Plaintiff's 4th discovery responses
12119	6/25/2014	GLC	0	9	\$ 160.00	0	1.2	1.2	\$ 192.00	Prepare for deposition of Chaney
12119	6/25/2014	GLC	0	12	\$ 160.00	0	8.2	8.2	\$ 1,312.00	Attend deposition of Chaney - General Manager of ASI

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	6/25/2014	GLC	0	1	\$ 160.00	0	3.4	3.4	\$ 544.00	Meet with Husch (Idaho attorney for Zilog) and Eaton (Zilog in-house attorney and electrical engineer) for Eaton to teach about unique elements of microcontrollers and ways to determine similarity of differences
12119	6/26/2014	GLC	0	12	\$ 160.00	0	7.8	7.8	\$ 1,248.00	Attend deposition of Wilson, Engineering Director at ASI
12119	6/26/2014	GLC	0	9	\$ 160.00	0	2.6	2.6	\$ 416.00	Prepare for deposition of Hackler
12119	6/26/2014	VM	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Transmit individual deposition certificates and change sheets to Defendants for review and signature
12119	6/26/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insureds re: 3rd set of interrogatories, requests for production of documents and requests for admissions
12119	6/26/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare 2 interrogatories, 2 requests for production and 9 requests for admissions from Plaintiff
12119	6/27/2014	GLC	0	12	\$ 160.00	0	8.4	8.4	\$ 1,344.00	Attend deposition of Hackler, CEO at ASI
12119	6/27/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Boise to Pocatello after depositions
12119	6/27/2014	VM	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Transmit ASI's first supplemental production of documents and records to Sage's discovery to Plaintiff (fourth set and the referenced exhibits ASI 2791 to ASI 3511)
12119	6/28/2014	GLC	0	6	\$ 160.00	0	2.2	2.2	\$ 352.00	Begin preparation of Defense motion for summary judgment
12119	7/8/2014	GLC	0	10	\$ 160.00	0	2.7	2.7	\$ 432.00	Evaluate and analyze motion to add claim for punitives with memorandum and affidavit (42 pages)
12119	7/8/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Zilog attorney Husch re: whether to seek continuance of punitive motion, motion for sanctions and timing & content of motion for summary judgment on liability
12119	7/8/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to four insureds and 2 adjusters re: Plaintiff's motion to amend to add punitive damages together with memorandums and affidavits
12119	7/9/2014	GLC	0	1	\$ 160.00	0	1.8	1.8	\$ 288.00	Telephone conference with expert Monte Dalrymple and Zilog attorneys Husch, Eaton and Ramon re: nature and scope of opinions
12119	7/9/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Husch re: discussion and drafting substance of Rick White's affidavit to rebut Hackler and substance of Staab affidavit to rebut Wilson
12119	7/9/2014	GLC	0	10	\$ 160.00	0	1.2	1.2	\$ 192.00	Evaluate and analyze whether case law supports Zarian's argument that because trade secret act has its own punitive damage provision if procedure for amending to add claim for punitives applies
12119	7/11/2014	JDO	0	6	\$ 130.00	0	2.6	2.6	\$ 338.00	Prepare argument section of memorandum opposing ASI's motion to add punitive damage claim (7 pages)
12119	7/12/2014	GLC	0	6	\$ 160.00	0	9.4	9.4	\$ 1,504.00	Prepare memorandum in opposition to motion to add punitive damages to claim (29 pages)
12119	7/14/2014	GLC	0	6	\$ 160.00	0	2.2	2.2	\$ 352.00	Finalize memorandum in opposition to punitives
12119	7/14/2014	JDO	0	6	\$ 130.00	0	0.6	0.6	\$ 78.00	Prepare affidavit of Gary Cooper in support of opposition to ASI's motion to add punitive damage claim (6 pages)
12119	7/15/2014	GLC	0	6	\$ 160.00	0	1.8	1.8	\$ 288.00	Outline motion for summary judgment issues and evidence
12119	7/17/2014	GLC	0	10	\$ 160.00	0	1.5	1.5	\$ 240.00	Evaluate and analyze ASI's reply memorandum in support of punitives (25 pages)
12119	7/17/2014	GLC	0	9	\$ 160.00	0	2.8	2.8	\$ 448.00	Prepare for oral argument on motion to add claim for punitive damages against Sage Defendants
12119	7/17/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive to Boise for oral argument on motion to add claim for punitive damages
12119	7/18/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Attend hearing on motion to add claim for punitives and motion for sanctions in Boise
12119	7/18/2014	GLC	0	12	\$ 160.00	0	1	1	\$ 160.00	Attend conference with expert Dalryple in Boise
12119	7/18/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Boise to Pocatello after oral argument on motion to add claim for punitive damages and motion for sanctions
12119	7/18/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email 7 deposition transcripts to Sage
12119	7/18/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare 2nd set of requests for admissions
12119	7/18/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare 3rd set of requests for admissions
12119	7/18/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare 3rd set of interrogatories
12119	7/19/2014	GLC	0	6	\$ 160.00	0	1.2	1.2	\$ 192.00	Prepare and finalize discovery objections and responses (9 requests for admissions, 2 interrogatories and 2 requests for production)

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	7/19/2014	GLC	0	10	\$ 160.00	0	2.2	2.2	\$ 352.00	Evaluate and analyze Dalrymple's expert report (20 pages)
12119	7/19/2014	GLC	0	6	\$ 160.00	0	1.2	1.2	\$ 192.00	Prepare order denying motion to amend to add claim for punitives (4 pages)
12119	7/21/2014	VM	0	1	\$ 80.00	0	0.4	0.4	\$ 32.00	Transmit all deposition (except AEO) to Dennis Reinstein including amended and second amended complaint, answer of Sage and answer of Zilog
12119	7/22/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Robert, Yearsley & Tiffany re: responses to 3rd set of interrogatories, requests for production and 2nd set of requests for admissions requesting they review, sign and return
12119	7/24/2014	JDO	0	10	\$ 130.00	0	1.8	1.8	\$ 234.00	Review and annotate deposition of Doug Hackler for motion for summary judgment (235 pages)
12119	7/24/2014	JDO	0	10	\$ 130.00	0	0.6	0.6	\$ 78.00	Finish review and annotating deposition of Dale Wilson for motion for summary judgment (53 pages)
12119	7/24/2014	JDO	0	10	\$ 130.00	0	1.6	1.6	\$ 208.00	Review and annotate deposition of Richard Cheney for motion for summary judgment (212 pages)
12119	7/25/2014	JDO	0	10	\$ 130.00	0	1.7	1.7	\$ 221.00	Review and annotate deposition of Dave Roberts for motion for summary judgment (423 pages)
12119	7/29/2014	GLC	0	10	\$ 160.00	0	0.6	0.6	\$ 96.00	Review and analyze Zilog's 2nd supplemental discovery responses (20 pages)
12119	7/31/2014	JDO	0	10	\$ 130.00	0	0.7	0.7	\$ 91.00	Review and annotate Yearsley deposition in preparation for drafting motion for summary judgment (392 pages)
12119	8/1/2014	JDO	0	10	\$ 130.00	0	0.4	0.4	\$ 52.00	Review and annotate Tiffany deposition in preparation for drafting motion for summary judgment (245 pages)
12119	8/1/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Dennis Reinstein re: deposition exhibits 43 and 325 for his review and comment
12119	8/1/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Dennis Reinstein re: exhibit B to protective order for execution
12119	8/1/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Dennis Reinstein re: Zilog's third supplemental responses to Plaintiff's fourth and fifth sets of requests for production
12119	8/5/2014	GLC	0	10	\$ 160.00	0	3.4	3.4	\$ 544.00	Evaluate and analyze 46 page expert report with approximately 50 pages of appendix
12119	8/5/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Email to Zarian and Luvai requesting they designate AEO and confidential sections rather than entire AEO so report can be shared with clients
12119	8/5/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Gary Husch re: discussion of issues and law for motion for summary judgment
12119	8/6/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Emails to and from Luvai re: proposed orders
12119	8/6/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Husch re: position on orders
12119	8/6/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Husch, Luvai and Zarian re: status of trade secret claim
12119	8/6/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Husch re: status of trade secret claim
12119	8/6/2014	JDO	0	6	\$ 130.00	0	1.4	1.4	\$ 182.00	Prepare facts section and standard of review in memorandum of support of motion for summary judgment (8 pages)
12119	8/7/2014	JDO	0	10	\$ 130.00	0	1.3	1.3	\$ 169.00	Review case law re: willful blindness, parol evidence, quasi-estoppel, foreign jurisdiction statutory law re: assignment of invention arguments and illegal contract provisions in preparing to argue breach of contract claim in summary judgment memorandum
12119	8/7/2014	JDO	0	6	\$ 130.00	0	3.4	3.4	\$ 442.00	Prepare section in memorandum supporting motion for summary judgment re: breach of contract claim (9 pages)
12119	8/8/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Zarian and Luvai requesting dates to depose Lorelli Hackler
12119	8/8/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare demand for supplementation of discovery replies to Plaintiff
12119	8/8/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Zarian, Husch and Luvai re: trade secrets claim
12119	8/8/2014	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Review and analyze 2 emails from Zarian re: interpretation of scheduling order and date for hearing on motion for summary judgment and response to said emails
12119	8/8/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Email to clients and adjusters re: dropping trade secret misappropriation claim
12119	8/9/2014	GLC	0	10	\$ 160.00	0	1.8	1.8	\$ 288.00	Evaluate and analyze Holland's report in detail and determine how to prepare reply expert disclosure
12119	8/11/2014	JDO	0	5	\$ 130.00	0	0.4	0.4	\$ 52.00	Research standing under consumer protection act and applicability of unjust enrichment when there is a contract

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Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	8/11/2014	JDO	0	6	\$ 130.00	0	2.4	2.4	\$ 312.00	Prepare argument sections for breach of fiduciary duty, breach of implied covenant of good faith, tortious interference with contract and economic expectancy, appropriation of ASI's name, unjust enrichment and consumer protection act (11 pages)
12119	8/11/2014	CBC	0	6	\$ 160.00	0	3	3	\$ 480.00	Prepare motion for summary judgment
12119	8/12/2014	GLC	0	6	\$ 160.00	0	3.2	3.2	\$ 512.00	Prepare outline of motion for summary judgment undisputed facts and legal arguments
12119	8/12/2014	CBC	0	6	\$ 160.00	0	4	4	\$ 640.00	Prepare memorandum in support of summary judgment
12119	8/12/2014	CBC	0	6	\$ 160.00	0	2	2	\$ 320.00	Continue preparation of motion for summary judgment
12119	8/13/2014	JDO	0	6	\$ 130.00	0	0.2	0.2	\$ 26.00	Prepare fifth request for production re: employment agreements that ASI's expert has entered into with companies he has worked for (4 pages)
12119	8/13/2014	CBC	0	6	\$ 160.00	0	5	5	\$ 800.00	Continue preparation of memorandum in support of summary judgment
12119	8/14/2014	CBC	0	6	\$ 160.00	0	5	5	\$ 800.00	Continue preparation of memorandum in support of summary judgment
12119	8/15/2014	GLC	0	1	\$ 160.00	0	1.2	1.2	\$ 192.00	Telephone conference with Gerry Husch re: remaining issues and arguments in motion for summary judgment briefing, including breach of contract, estoppel, ECA too broad to be enforceable, non-interference with own contract, pre-emption and no damage due to website
12119	8/15/2014	GLC	0	1	\$ 160.00	0	0.6	0.6	\$ 96.00	Telephone conference with Monte Dalrymple re: scope of rebuttal expert testimony concerning non-similarity of the Zilog and ASI microcontrollers and rebuttal to claim that Sage individuals were accessing Zilog computers from ASI workstations
12119	8/15/2014	GLC	0	1	\$ 160.00	0	0.6	0.6	\$ 96.00	Telephone conference with Dennis Reinstein re: scope and extent of expert testimony about lost profits as claimed by Hoffman and lost revenue claimed by Holland
12119	8/15/2014	GLC	0	10	\$ 160.00	0	1.4	1.4	\$ 224.00	Evaluate and analyze LonePeak expert report (10 pages plus 22 pages of appendix)
12119	8/16/2014	GLC	0	6	\$ 160.00	0	3.2	3.2	\$ 512.00	Revise memorandum in support of motion for summary judgment
12119	8/19/2014	GLC	0	12	\$ 160.00	0	1.6	1.6	\$ 256.00	Drive to Boise for expert interview (3.2 hours, split 50% with another case)
12119	8/19/2014	JDO	0	5	\$ 130.00	0	0.6	0.6	\$ 78.00	Research moonlighting laws, enforcement of assignment of invention clauses and statutes prohibiting assignment of inventions in foreign jurisdictions
12119	8/20/2014	GLC	0	12	\$ 160.00	0	4.2	4.2	\$ 672.00	Meet with Husch to interview expert Reinstein including two telephone conference with David Staab and one telephone conference with William Tiffany - discussed possible rebuttals to the reports of Holland and Hoffman
12119	8/20/2014	GLC	0	12	\$ 160.00	0	1.6	1.6	\$ 256.00	Drive to Pocatello from Boise after meeting (3.2 hours, split 50% with another case)
12119	8/21/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to adjusters and insureds re: ASI's motion for voluntary dismissal of its claims for misappropriation of trade secrets, improper appropriation of name, consumer protection act and injunctive relief
12119	8/22/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with expert Donohoe and Husch re: preliminary analysis and request for direction on expert report
12119	8/22/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with expert Dalrymple to discuss preliminary report, request for additional analysis to use in support of motion for summary judgment and analysis of Sage Defendant's use of ASI resources
12119	8/22/2014	GLC	0	6	\$ 160.00	0	1.4	1.4	\$ 224.00	Finalize memorandum in support of motion for summary judgment by adding background facts (3 pages)
12119	8/22/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with John Janzen re: substance of affidavit
12119	8/22/2014	GLC	0	6	\$ 160.00	0	0.8	0.8	\$ 128.00	Prepare affidavit (3 pages)
12119	8/23/2014	GLC	0	6	\$ 160.00	0	4.2	4.2	\$ 672.00	Finalize memorandum in support of motion for summary judgment (25 pages)
12119	8/24/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare motion for default certificate
12119	8/24/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare default certificate
12119	8/24/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare military service declaration
12119	8/24/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare military service order
12119	8/24/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare request to submit for decision

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Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	8/24/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare motion for default judgment
12119	8/24/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of judgment
12119	8/24/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare judgment
12119	8/24/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare findings of fact, conclusions of law and order
12119	8/25/2014	GLC	0	10	\$ 160.00	0	2.6	2.6	\$ 416.00	Evaluate and analyze Dalrymple preliminary report (42 pages)
12119	8/25/2014	GLC	0	10	\$ 160.00	0	0.6	0.6	\$ 96.00	Evaluate and analyze Donohoe preliminary report (7 pages)
12119	8/25/2014	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Evaluate and analyze Gyle Yearsley's employment agreement with ERG to make sure it does not conflict with Donohoe's opinions
12119	8/25/2014	GLC	0	9	\$ 160.00	0	2.4	2.4	\$ 384.00	Prepare for Lorelli Hackler deposition (review approximately 15 possible exhibits, review two sets of questions from expert Reinstein re: issues to be answered)
12119	8/25/2014	GLC	0	12	\$ 160.00	0	1.8	1.8	\$ 288.00	Drive from Pocatello to Boise for depositions (split 50% with another case)
12119	8/25/2014	JDO	0	6	\$ 130.00	0	0.3	0.3	\$ 39.00	Prepare affidavits of Roberts, Yearsley and Tiffany in support of motion for summary judgment (2 pages each)
12119	8/26/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Finalize affidavit of John Janzen - email to him for signature
12119	8/27/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Attend deposition of Lorelli Hackler in Boise
12119	8/27/2014	GLC	0	12	\$ 160.00	0	1.8	1.8	\$ 288.00	Drive from Boise to Pocatello after deposition (3.4 hours, split 50% with another case)
12119	8/27/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Telephone conference with Dave Roberts and Bill Tiffany re: mediation and summary judgment
12119	8/27/2014	CBC	0	6	\$ 160.00	0	3.2	3.2	\$ 512.00	Prepare memorandum in support of motion in limine (11 pages)
12119	8/27/2014	CBC	0	10	\$ 160.00	0	1.8	1.8	\$ 288.00	Identify records supporting motion for summary judgment (20 deposition excerpts & 35 exhibits)
12119	8/28/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Communications with Donohoe re: issues to address in expert report with information necessary for his backup
12119	8/28/2014	GLC	0	1	\$ 160.00	0	0.8	0.8	\$ 128.00	Lengthy discussion with Monte Dalrymple re: finalizing expert report and additional issues to be addressed
12119	8/28/2014	GLC	0	6	\$ 160.00	0	1.8	1.8	\$ 288.00	Outline expert disclosures for Roberts, Tiffany, Yearsley and Perryman
12119	8/28/2014	GLC	0	6	\$ 160.00	0	0.4	0.4	\$ 64.00	Prepare objection to proposed order permitting voluntary dismissal of counts including trade secrets (2 pages)
12119	8/28/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare motion for summary judgment
12119	8/28/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare motion in limine
12119	8/28/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of hearing on motion for summary judgment
12119	8/28/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of hearing on motion in limine
12119	8/28/2014	CBC	0	6	\$ 160.00	0	1	1	\$ 160.00	Prepare memorandum in support of motion in limine
12119	8/29/2014	GLC	0	10	\$ 160.00	0	1.2	1.2	\$ 192.00	Evaluate and analyze sixth supplemental discovery responses with documents used by experts (20 pages of schedules)
12119	8/29/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Dennis Reinstein re: report substance and backup documents including discussion of tools and how the tool cost is allocated
12119	8/29/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Email to Donohoe with and discussion of deposition exhibits and deposition excerpts re: Sage Defendant's permission to do outside work
12119	9/1/2014	GLC	0	6	\$ 160.00	0	5.2	5.2	\$ 832.00	Prepare lay witness disclosure, expert disclosure of Roberts, Tiffany and Yearsley (16 pages)
12119	9/1/2014	GLC	0	1	\$ 160.00	0	0.8	0.8	\$ 128.00	Telephone conference with Hush and Dalrymple to finalize expert witness disclosure of Dalrymple
12119	9/1/2014	GLC	0	10	\$ 160.00	0	2.2	2.2	\$ 352.00	Evaluate and analyze Dalrymple expert report (27 pages plus several hundred page reference documents for calculating time to tape out)
12119	9/2/2014	JDO	0	10	\$ 130.00	0	0.8	0.8	\$ 104.00	Review and analyze draft #3 of Donohoe's expert report - provide citations to depositions and exhibits plus suggesting additional topics to cover
12119	9/2/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Evaluate and analyze emails from Roberts, Tiffany and Yearsley re: revisions and additions to expert disclosure
12119	9/3/2014	JDO	0	1	\$ 130.00	0	0.4	0.4	\$ 52.00	Telephone conference with expert Chuck Donohoe and Zilog's counsel re: Donohoe's expert report



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12119	9/3/2014	JDO	0	1	\$ 130.00	0	0.2	0.2	\$ 26.00	Telephone conference with Zilog's counsel re: facilitating completion of expert's report, including citations to the record, editing, formatting and substantive revisions that should be proposed
12119	9/3/2014	JDO	0	10	\$ 130.00	0	0.8	0.8	\$ 104.00	Review and analyze draft of Donohoe's expert report (24 pages)
12119	9/3/2014	JDO	0	1	\$ 130.00	0	0.3	0.3	\$ 39.00	Email to Donohoe re: proposed additional language and identified areas that needed addressed
12119	9/3/2014	JDO	0	10	\$ 130.00	0	0.4	0.4	\$ 52.00	Review and analyze expert report of Dennis Reinstein (6 pages)
12119	9/3/2014	JDO	0	1	\$ 130.00	0	0.2	0.2	\$ 26.00	Email and telephone conference with Dennis Reinstein re: questions of factual record and changes to report
12119	9/3/2014	BS	0	6	\$ 80.00	0	0.15	0.15	\$ 12.00	Prepare notice of service of lay and expert witness disclosure
12119	9/3/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Revise lay and expert witness disclosure to remove Charles Donohoe
12119	9/3/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare supplemental disclosure to provide for Charles Donohoe
12119	9/3/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of service of supplemental disclosure
12119	9/4/2014	JDO	0	1	\$ 130.00	0	1.2	1.2	\$ 156.00	Telephone conference with Donohoe and Zilog's counsel re: Donohoes' expert report - review each proposed change and discuss language that is to be modified
12119	9/4/2014	JDO	0	6	\$ 130.00	0	0.4	0.4	\$ 52.00	Prepare proposed language for areas of Donohoe's report - send to Donohoe
12119	9/5/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Correspondence to insured and adjuster re: electronic copy of motions for summary judgment from ASI, Sage and Zilog
12119	9/9/2014	JDO	0	10	\$ 130.00	0	1.8	1.8	\$ 234.00	Review deposition testimony and exhibits cited in ASI's memorandum supporting motion for summary judgment - annotated instances where record is not accurately cited
12119	9/9/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Husch re: upcoming motions, dates for depositions and dates for mediation
12119	9/9/2014	CBC	0	10	\$ 160.00	0	2	2	\$ 320.00	Review and analyze Plaintiff's motion for summary judgment
12119	9/10/2014	JDO	0	6	\$ 130.00	0	3.6	3.6	\$ 468.00	Begin preparation of memorandum opposing ASI's motion for summary judgment - complete statement of undisputed facts (17 pages)
12119	9/10/2014	CBC	0	6	\$ 160.00	0	3	3	\$ 480.00	Prepare memorandum opposing ASI's motion for summary judgment
12119	9/11/2014	JDO	0	6	\$ 130.00	0	3.2	3.2	\$ 416.00	Complete preparation of memorandum opposing ASI's motion for summary judgment - complete analysis and argument section (15 pages)
12119	9/11/2014	GLC	0	12	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephonic scheduling conference with all lawyers to determine dates for expert depositions, mediation, 30(b)(6) depositions, and finalizing Hackler deposition
12119	9/11/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare discovery responses to Plaintiff's 4th set of requests for production
12119	9/11/2014	CBC	0	6	\$ 160.00	0	3	3	\$ 480.00	Continue preparation of memorandum opposing ASI's motion for summary judgment
12119	9/12/2014	CBC	0	10	\$ 160.00	0	1	1	\$ 160.00	Review ASI's memorandum in opposition to Sage's motion for summary judgment
12119	9/13/2014	GLC	0	10	\$ 160.00	0	3.2	3.2	\$ 512.00	Evaluate and analyze ASI's response memorandum in opposition to Sage Defendant's motion for summary judgment (37 pages)
12119	9/13/2014	GLC	0	6	\$ 160.00	0	1.6	1.6	\$ 256.00	Prepare outline of arguments for Sage Defendants' reply memorandum in support of motion for summary judgment
12119	9/15/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Robert, Yearsley and Tiffany re: response to 4th set of discovery from ASI for approval and signature
12119	9/15/2014	JDO	0	6	\$ 130.00	0	2.9	2.9	\$ 377.00	Prepare reply memorandum in support of Sage and Sage's Defendant's motion for summary judgment (13 pages)
12119	9/15/2014	CBC	0	6	\$ 160.00	0	3	3	\$ 480.00	Prepare reply memorandum in support of motion for summary judgment by Sage, et al
12119	9/16/2014	CBC	0	6	\$ 160.00	0	3	3	\$ 480.00	Continue Preparation of reply memorandum in support of motion for summary judgment by Sage, et al
12119	9/17/2014	CBC	0	6	\$ 160.00	0	3	3	\$ 480.00	Continue Preparation of reply memorandum in support of motion for summary judgment by Sage, et al
12119	9/18/2014	JDO	0	6	\$ 130.00	0	0.2	0.2	\$ 26.00	Prepare motion and order to exceed page limit for memorandum opposing ASI's motion for summary judgment (4 pages)

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Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	9/18/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of second hearing on motion to strike portions of second affidavit of Sarah Arnett
12119	9/19/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insureds re: ASI's objections to 5th set of discovery
12119	9/19/2014	BS	0	6	\$ 80.00	0	0.4	0.4	\$ 32.00	Prepare case binder for motion for summary judgment hearings
12119	9/20/2014	GLC	0	9	\$ 160.00	0	3.2	3.2	\$ 512.00	Prepare for oral argument on ASI's motion for summary judgment against Sage and Sage Defendants
12119	9/20/2014	GLC	0	9	\$ 160.00	0	3.4	3.4	\$ 544.00	Plan and prepare for oral argument on Sage's motion for summary judgment against ASI
12119	9/20/2014	GLC	0	9	\$ 160.00	0	1.2	1.2	\$ 192.00	Plan and prepare for oral argument on Sage's motion in limine on expert Holland
12119	9/20/2014	GLC	0	9	\$ 160.00	0	0.6	0.6	\$ 96.00	Plan and prepare for oral argument on Sage's motion to strike expert reports from consideration on motion for summary judgment
12119	9/20/2014	BS	0	6	\$ 80.00	0	1	1	\$ 80.00	Prepare case binder for motion for summary judgment hearings on Sep 26, 2014
12119	9/22/2014	JDO	0	10	\$ 130.00	0	0.4	0.4	\$ 52.00	Review and analyze Zilog's renewed motion for sanctions and supporting memorandum (20 pages)
12119	9/22/2014	JDO	0	6	\$ 130.00	0	0.2	0.2	\$ 26.00	Prepare joinder with Zilog's renewed motions for sanctions (2 pages)
12119	9/23/2014	CBC	0	10	\$ 160.00	0	2	2	\$ 320.00	Review and analyze ASI's opposition to Sage's motion in limine
12119	9/23/2014	CBC	0	6	\$ 160.00	0	1	1	\$ 160.00	Prepare outline for oral argument on ASI's opposition to Sage's motion in limine
12119	9/23/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to all insureds and adjusters re: availability for Oct 20 mediation
12119	9/24/2014	JDO	0	10	\$ 130.00	0	0.6	0.6	\$ 78.00	Review and analyze ASI's opposition to motion in limine re: Holland's expert's report (20 pages)
12119	9/24/2014	CBC	0	10	\$ 160.00	0	1	1	\$ 160.00	Review and analyze ASI's option to Sage re: motion in limine to exclude expert testimony
12119	9/24/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Kennedy Luvai re: full availability for mediation on Oct 20
12119	9/25/2014	GLC	0	12	\$ 160.00	0	3.4	3.4	\$ 544.00	Drive from Pocatello to Boise for hearing on pending motions
12119	9/25/2014	GLC	0	9	\$ 160.00	0	1.2	1.2	\$ 192.00	Prepare for hearing on ASI motion for summary judgment and Sage motion for summary judgment
12119	9/25/2014	JDO	0	6	\$ 130.00	0	0.4	0.4	\$ 52.00	Prepare summary of ASI's arguments opposing the motion in limine for hearing on 9-26-14
12119	9/25/2014	CBC	0	10	\$ 160.00	0	1	1	\$ 160.00	Review ASI's memorandum in opposition to Sage's motion in limine
12119	9/26/2014	GLC	0	12	\$ 160.00	0	7.2	7.2	\$ 1,152.00	Attend hearing on pending motion for summary judgment by ASI against Sage, Sage against ASI, Zilog against ASI and ASI against Sage counterclaim
12119	9/26/2014	GLC	0	12	\$ 160.00	0	0.6	0.6	\$ 96.00	Meet with clients re: status and strategy going forward
12119	9/26/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Boise to Pocatello after motion for summary judgment hearings
12119	9/29/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to adjusters re: availability for mediation on Saturday, Oct 18 or 25
12119	9/30/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Husch, Ramon, Reinstein and Cooper re: pros and cons of depositions of Holland and Hoffman (very lengthy)
12119	10/1/2014	JDO	0	6	\$ 130.00	0	0.4	0.4	\$ 52.00	Prepare meet and confer letter to ASI re: ASI's objection to fifth set of discovery requesting agreements ASI's expert reviewed in preparing his report (2 pages)
12119	10/1/2014	GLC	0	1	\$ 160.00	0	1.2	1.2	\$ 192.00	Telephone conference with Reinstein and Husch to evaluate Reinstein's opinions and issues to cover in depositions of Holland and Hoffman
12119	10/1/2014	GLC	0	1	\$ 160.00	0	0.8	0.8	\$ 128.00	Seven emails between Cooper, Zarian, Kennedy and Husch re: scheduling expert depositions, agreement on terms for payment of experts to be deposed, designation of Reinstein and Hoffman reports as AEO or confidential
12119	10/3/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Four emails with Husch and Zarian re: apportionment of costs for Dalrymple & Donohoe and limitation on ASI exposure
12119	10/3/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Husch re: objections to duces tecum served with deposition notices for experts and joinder in same plus limitations on expert expenses
12119	10/6/2014	GLC	0	12	\$ 160.00	0	3.4	3.4	\$ 544.00	Drive to Boise for witness preparation and defend expert's depositions
12119	10/6/2014	GLC	0	12	\$ 160.00	0	1.8	1.8	\$ 288.00	Conference with John Janzen to prepare for deposition

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Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	10/6/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notices of deposition to John Janzen, Charles Donohoe and Monte Dalrymple
12119	10/6/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Charles Donohoe re: Kennedy Luvai's letter of 10-3-14 requesting his comments
12119	10/7/2014	JDO	0	6	\$ 130.00	0	0.4	0.4	\$ 52.00	Prepare motion in limine precluding ASI from raising issue of assignment of interventions (2 pages)
12119	10/7/2014	GLC	0	12	\$ 160.00	0	2.7	2.7	\$ 432.00	Defend deposition of John Janzen in Boise
12119	10/7/2014	GLC	0	12	\$ 160.00	0	2.4	2.4	\$ 384.00	Prepare Monte Dalrymple for deposition by phone with Gerry Husch
12119	10/7/2014	GLC	0	12	\$ 160.00	0	4.4	4.4	\$ 704.00	Prepare Donohoe for deposition in person with Gerry Husch
12119	10/8/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Defend Donohoe deposition in Boise
12119	10/8/2014	GLC	0	12	\$ 160.00	0	1.4	1.4	\$ 224.00	Meet with Dalrymple to provide final preparation for deposition with Gerry Husch
12119	10/8/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Defend Dalrymple deposition in Boise
12119	10/8/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Boise to Pocatello after depositions of experts
12119	10/8/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insures re: Kennedy Luvai's letter of 10-8-14
12119	10/9/2014	GLC	0	10	\$ 160.00	0	0.8	0.8	\$ 128.00	Review and analyze ASI's expert rebuttal disclosure (31 pages)
12119	10/10/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of hearing on motion in limine to preclude ASI from raising issue of failure to assign inventions by Roberts, Yearsley and Tiffany
12119	10/10/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare amended notice of hearing on motion in limine to exclude expert report and testimony of Stephen Holland
12119	10/13/2014	GLC	0	6	\$ 160.00	0	4.2	4.2	\$ 672.00	Prepare detailed pre-trial reports
12119	10/13/2014	GLC	0	6	\$ 160.00	0	1.2	1.2	\$ 192.00	Prepare mediation statement for Judge Schilling
12119	10/14/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Drive to Boise for ASI 30(b)(6) deposition
12119	10/15/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Attend 30(b)(6) deposition of ASI in Boise
12119	10/15/2014	GLC	0	12	\$ 160.00	0	2.2	2.2	\$ 352.00	Conference with Zilog attorney Husch re: motion in limine strategy, return of Sage \$30,000 for mediation, opening demand in mediation, whether to make joint or separate offers at mediation and strategy for eliminating further claims for trial
12119	10/15/2014	GLC	0	12	\$ 160.00	0	3	3	\$ 480.00	Drive from Boise to Pocatello after 30(b)(6) deposition
12119	10/16/2014	GLC	0	1	\$ 160.00	0	0.8	0.8	\$ 128.00	Telephone conference with Sage's personal counsel, Chad Bernards re: mediation strategy and motions in limine for trial (very lengthy call)
12119	10/16/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notices of deposition of Stephen Holland and Richard Hoffman
12119	10/16/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Husch re: strategy for pre-trial, mediation, motions in limine and motions to reconsider plus substantive discussion of merits of motions to reconsider on breach of contract and unjust enrichment (very lengthy)
12119	10/16/2014	JDO	0	6	\$ 130.00	0	0.4	0.4	\$ 52.00	Prepare motion in limine preventing ASI from raising issue of improper use or misappropriation of ASI's confidential information at trial (3 pages)
12119	10/17/2014	GLC	0	1	\$ 160.00	0	1.4	1.4	\$ 224.00	Telephone conference with Shoquist re: pre-trial report - long substantive analysis of claims for and against Sage Defendants
12119	10/17/2014	GLC	0	6	\$ 160.00	0	5.1	5.1	\$ 816.00	Prepare Farmer's pre-trial report
12119	10/17/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare amended notice of deposition of Stephan Holland
12119	10/17/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Monte Dalrymple re: ASI's 10th supplemental document production
12119	10/17/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Dennis Reinstein re: ASI's 10th supplemental document production
12119	10/17/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to adjusters and insured re: depositions of Richard Hoffman and Stephen Holland on 10-30-04
12119	10/18/2014	GLC	0	6	\$ 160.00	0	2.2	2.2	\$ 352.00	Prepare two motion for summary judgment orders for Judge Neville as directed at the hearing order on ASI's motion for partial summary judgment against Sage Defendants and order on Sage's motion for summary judgment against ASI (detailed orders based on Judge's decision announced from the bench - 6 pages)
12119	10/20/2014	GLC	0	6	\$ 160.00	0	0.2	0.2	\$ 32.00	Prepare objection to notice of deposition of Reinstein

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	10/20/2014	GLC	0	1	\$ 160.00	0	0.6	0.6	\$ 96.00	Telephone conference with Roberts, Yearsley, Tiffany & Bernards re: mediation explanation and preparation - and answer questions
12119	10/20/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of hearing on motion in limine to preclude ASI from raising the issues of improper use or misappropriation of confidential information by Roberts, Yearsly and Tiffany
12119	10/23/2014	GLC	0	6	\$ 160.00	0	3.4	3.4	\$ 544.00	Prepare memorandum in support of motion to reconsider (7 pages)
12119	10/24/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Barry Trent to prepare for mediation and emails
12119	10/24/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Drive to Boise for mediation
12119	10/25/2014	GLC	0	12	\$ 160.00	0	8.2	8.2	\$ 1,312.00	Attend mediation in Boise
12119	10/25/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Boise to Pocatello after mediation
12119	10/26/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Email to everyone re: benefits and drawbacks of filing offer of judgment
12119	10/26/2014	GLC	0	10	\$ 160.00	0	2.7	2.7	\$ 432.00	Review and analyze Hoffman's economic report in preparation for deposition on Thursday (24 pages with attachments)
12119	10/26/2014	GLC	0	10	\$ 160.00	0	0.8	0.8	\$ 128.00	Read economic articles on gross profit vs net profit and incremental cost
12119	10/26/2014	GLC	0	6	\$ 160.00	0	6.2	6.2	\$ 992.00	Prepare memorandum in support of motion in limine on Hoffman Testimony (9 pages)
12119	10/27/2014	JDO	0	6	\$ 130.00	0	0.2	0.2	\$ 26.00	Prepare motion in limine excluding opinion of Hoffman
12119	10/27/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare notice of hearing re: motion in limine concerning Hoffman
12119	10/29/2014	GLC	0	12	\$ 160.00	0	0.5	0.5	\$ 80.00	Participate in Farmer's roundtable trial conference
12119	10/29/2014	GLC	0	12	\$ 160.00	0	3.5	3.5	\$ 560.00	Drive to Boise for deposition of Holland and Hoffman
12119	10/29/2014	GLC	0	9	\$ 160.00	0	2.2	2.2	\$ 352.00	Plan and prepare for Holland deposition
12119	10/29/2014	GLC	0	9	\$ 160.00	0	1.4	1.4	\$ 224.00	Plan and prepare for Hoffman deposition
12119	10/30/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Attend deposition of Holland in Boise
12119	10/30/2014	GLC	0	12	\$ 160.00	0	0.8	0.8	\$ 128.00	Conference with Reinstein and Gerry Husch to review documents before Hoffman deposition
12119	10/30/2014	GLC	0	12	\$ 160.00	0	3.4	3.4	\$ 544.00	Attend Hoffman deposition in Boise
12119	10/30/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Boise to Pocatello after depositions
12119	10/30/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Correspondence to Court re: order denying ASI's motion to partial summary judgment against Sage
12119	11/3/2014	GLC	0	10	\$ 160.00	0	2.2	2.2	\$ 352.00	Review and analyze witnesses needed for trial and expected testimony
12119	11/3/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Reinstein re: upcoming deposition and Hoffman analysis
12119	11/3/2014	GLC	0	1	\$ 160.00	0	0.8	0.8	\$ 128.00	Telephone conference with Reinstein, Dalrymple and Husch re: Hoffman analysis
12119	11/3/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Husch re: responses to motions in limine
12119	11/3/2014	JDO	0	10	\$ 130.00	0	1.6	1.6	\$ 208.00	Evaluate and analyze 11 motions in limine from ASI to prepare opposition memorandums (94 pages)
12119	11/4/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Pocatello to Boise for Reinstein deposition
12119	11/4/2014	ALC	0	6	\$ 130.00	0	6.8	6.8	\$ 884.00	Prepare jury instructions on breach of contract, breach of fiduciary duty, breach of covenant of good faith and fiduciary tortious interference, unjust enrichment, damages for net profit and disgorgement
12119	11/4/2014	JDO	0	1	\$ 130.00	0	0.2	0.2	\$ 26.00	Emails with Chad Bernard and Zilog attorney coordinating responses to ASI's 11 motions in limine
12119	11/4/2014	JDO	0	1	\$ 130.00	0	0.4	0.4	\$ 52.00	Telephone conference with expert Denis Reinstein, Zilog's counsel and David Staab
12119	11/4/2014	JDO	0	6	\$ 130.00	0	1.6	1.6	\$ 208.00	Prepare memorandum opposing ASI's motion in limine #1 (9 pages)
12119	11/5/2014	GLC	0	12	\$ 160.00	0	1.2	1.2	\$ 192.00	Attend meeting with Husch and Steve Thomas (Zilog) to discuss trial strategy
12119	11/5/2014	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Meet with Reinstein to prepare for deposition
12119	11/5/2014	GLC	0	12	\$ 160.00	0	4.4	4.4	\$ 704.00	Attend deposition of Reinstein
12119	11/5/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive from Boise to Pocatello after deposition
12119	11/5/2014	ALC	0	6	\$ 130.00	0	4.2	4.2	\$ 546.00	Continue to prepare jury instructions on breach of contract, breach of fiduciary duty, breach of covenant of good faith and fiduciary tortious interference, unjust enrichment, damages for net profit and disgorgement

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	11/5/2014	JDO	0	1	\$ 130.00	0	0.2	0.2	\$ 26.00	Telephone conference with private counsel for the insured to discuss arguments in the memorandums opposing motions in limine
12119	11/5/2014	JDO	0	6	\$ 130.00	0	0.8	0.8	\$ 104.00	Prepare memorandum opposing ASI's motion in limine #2 (6 pages)
12119	11/5/2014	JDO	0	5	\$ 130.00	0	0.8	0.8	\$ 104.00	Research case law re: oral modification of written contracts, ratification of non-binding statements of agents, and the admissibility of circumstantial evidence in fraud claims
12119	11/5/2014	JDO	0	6	\$ 130.00	0	0.6	0.6	\$ 78.00	Prepare memorandum opposing ASI's motion in limine #5 (4 pages)
12119	11/5/2014	JDO	0	6	\$ 130.00	0	1.2	1.2	\$ 156.00	Prepare memorandum opposing ASI's motion in limine #6, 7 and 9 (8 pages)
12119	11/5/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insureds re: Holland and Hoffman deposition transcripts and exhibits for review
12119	11/6/2014	JDO	0	6	\$ 130.00	0	0.8	0.8	\$ 104.00	Prepare memorandum opposing ASI's motion in limine #11(6 pages)
12119	11/6/2014	JDO	0	6	\$ 130.00	0	0.2	0.2	\$ 26.00	Prepare affidavit of Gary L Cooper in opposition to ASI's motion in limine (2 pages)
12119	11/7/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Mark Shoquist re: trial strategy
12119	11/7/2014	JDO	0	6	\$ 130.00	0	0.4	0.4	\$ 52.00	Prepare joinder with Zilog's opposition to ASI's motion in limine #4 re: Dalrymple report (3 pages)
12119	11/8/2014	GLC	0	10	\$ 160.00	0	4.2	4.2	\$ 672.00	Evaluate and analyze records produced during discovery to identify trial exhibits (300 deposition exhibits)
12119	11/10/2014	GLC	0	10	\$ 160.00	0	1.2	1.2	\$ 192.00	Evaluate, analyze and finalize records produced during discovery to identify trial exhibits (100 deposition exhibits)
12119	11/10/2014	JDO	0	1	\$ 130.00	0	0.4	0.4	\$ 52.00	Email to Plaintiff's counsel and letter to court explaining why proposed order on Sage Defendant's motion for summary judgment dismisses all unjust enrichment claims against Sage Silicon Solutions and not just claim associated with ASI trade secret
12119	11/10/2014	JDO	0	10	\$ 130.00	0	0.8	0.8	\$ 104.00	Evaluate and analyze ASI's opposition to the Sage Defendant's and Zilog's motions in limine (61 pages total)
12119	11/10/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insureds re: deposition exhibit 385 requesting their comments
12119	11/10/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Prepare trial witness list
12119	11/11/2014	GLC	0	6	\$ 160.00	0	3.8	3.8	\$ 608.00	Prepare reply memorandum on motion to reconsider (10 pages)
12119	11/11/2014	ALC	0	6	\$ 130.00	0	2.4	2.4	\$ 312.00	Prepare reply to ASI's opposition to Sage Defendant's motion in limine re: Holland (11 pages)
12119	11/11/2014	JDO	0	6	\$ 130.00	0	1	1	\$ 130.00	Prepare reply to ASI's opposition to Sage's Defendant's motion in limine re: misappropriation of confidential information (5 pages)
12119	11/11/2014	JDO	0	6	\$ 130.00	0	0.8	0.8	\$ 104.00	Prepare reply to ASI's opposition to Sage's Defendant's motion in limine to preclude ASI from raising the failure to assign inventions issue (5 pages)
12119	11/11/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Dennis Reinstein and John Janzen re: anticipated trial testimony from December 15 to 18
12119	11/11/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Monte Dalrymple and Charles Donohoe re: anticipated trial testimony from December 15 to 18
12119	11/11/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Moffatt Thomas re: calling David Staab from Zilog as last witness and to confirm with David and Gerry Husch
12119	11/12/2014	ALC	0	6	\$ 130.00	0	1.2	1.2	\$ 156.00	Prepare reply to ASI's opposition to Sage Defendant's motion to reconsider (8 pages)
12119	11/12/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	File 5 reply memorandum re: motions in limine
12119	11/12/2014	BS	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Serve 5 reply memorandum re: motions in limine plus affidavit of JD Oborn on all counsel by email and mail
12119	11/13/2014	GLC	0	12	\$ 160.00	0	0.6	0.6	\$ 96.00	Participate in pre-trial roundtable with Mark Shoquist and others
12119	11/13/2014	GLC	0	9	\$ 160.00	0	4.8	4.8	\$ 768.00	Prepare for pre-trial and oral argument on 18 motions in limine and 2 motions to reconsider
12119	11/13/2014	GLC	0	12	\$ 160.00	0	3.8	3.8	\$ 608.00	Drive to Boise for pre-trial
12119	11/13/2014	BS	0	6	\$ 80.00	0	0.4	0.4	\$ 32.00	Prepare trial binders for court and opposing counsel providing witness lists, exhibit lists and jury instructions
12119	11/14/2014	GLC	0	12	\$ 160.00	0	6.8	6.8	\$ 1,088.00	Attend pre-trial in Boise for oral argument on 2 motions to reconsider and 11 motions in limine
12119	11/14/2014	GLC	0	12	\$ 160.00	0	3.9	3.9	\$ 624.00	Drive from Boise to Pocatello after pre-trial

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Attorney Fees report

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	11/16/2014	GLC	0	10	\$ 160.00	0	0.6	0.6	\$ 96.00	Evaluate and analyze order on ASI's motion for summary judgment against Sage (4 pages)
12119	11/16/2014	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Evaluate and analyze order on ASI's voluntary dismissal of claims (4 pages)
12119	11/16/2014	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Evaluate and analyze order on Zilog's motion for summary judgment (3 pages)
12119	11/16/2014	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Evaluate and analyze order denying ASI's motion for summary judgment (3 pages)
12119	11/16/2014	GLC	0	10	\$ 160.00	0	0.4	0.4	\$ 64.00	Evaluate and analyze order denying ASI's motion for summary judgment on counterclaim (3 pages)
12119	11/17/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Correspondence to adjuster providing order denying ASI's motion for partial summary judgment against Sage's Defendants, order granting ASI's motion for voluntary dismissal of certain claims, order denying in part and granting in part Zilog's motion for summary judgment, order denying Plaintiff's motion for summary judgment re: Roberts, Yearlsy and Tiffany counterclaim, order granting in part and denying in part Sage's motion for summary judgment
12119	11/19/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Reinstein about report
12119	11/21/2014	GLC	0	10	\$ 160.00	0	1.2	1.2	\$ 192.00	Review and analyze supplemental Reinstein report with Reinstein and Husch to provide guidance for final supplemental report contents
12119	11/24/2014	GLC	0	1	\$ 160.00	0	0.8	0.8	\$ 128.00	Telephone conference with Dennis Reinstein and Gerry Husch re: final report suggestions - very lengthy discussion of 9 schedules and how the schedules were calculated
12119	12/1/2014	GLC	0	10	\$ 160.00	0	0.8	0.8	\$ 128.00	Review and analyze 13th motion in limine memorandum (6 pages)
12119	12/1/2014	GLC	0	1	\$ 160.00	0	0.2	0.2	\$ 32.00	Telephone conference with Gerry Husch re: response to MIL 13
12119	12/3/2014	GLC	0	10	\$ 160.00	0	0.6	0.6	\$ 96.00	Review and analyze Zilog's opposition to motion in limine striking Reinstein's damage opinion (12 pages)
12119	12/3/2014	JDO	0	10	\$ 130.00	0	0.6	0.6	\$ 78.00	Review and analyze Zilog's opposition to ASI's motion in limine re: Reinstein's supplemental report (15 pages) to determine if we will join Zilog's opposition or file a separate opposition
12119	12/4/2014	JDO	0	6	\$ 130.00	0	0.4	0.4	\$ 52.00	Prepare joinder with Zilog's opposition to ASI's motion in limine #13 (3 pages)
12119	12/5/2014	JDO	0	6	\$ 130.00	0	0.2	0.2	\$ 26.00	Prepare joinder in Zilog's opposition to motion in limine #12 (3 pages)
12119	12/8/2014	GLC	0	9	\$ 160.00	0	3.2	3.2	\$ 512.00	Prepare for oral argument on remaining 8 motions in limine
12119	12/9/2014	GLC	0	12	\$ 160.00	0	7.6	7.6	\$ 1,216.00	Drive to and from Boise for oral argument on remaining 8 motions in limine
12119	12/9/2014	GLC	0	12	\$ 160.00	0	4.2	4.2	\$ 672.00	Present oral argument on remaining 8 motions in limine
12119	12/12/2014	GLC	0	6	\$ 160.00	0	0.4	0.4	\$ 64.00	Prepare offer of judgment for \$100,000
12119	12/12/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Evelyn Perryman re: trial subpoena and if Gary should accept it for her
12119	12/13/2014	GLC	0	6	\$ 160.00	0	3.2	3.2	\$ 512.00	Finalize jury instructions on breach of contract with affirmative defenses, breach of fiduciary duty, breach of good faith and fair dealings with affirmative defense, and interference with prospective economic advantage with affirmative defenses
12119	12/15/2014	GLC	0	9	\$ 160.00	0	0.8	0.8	\$ 128.00	Telephone conference with Dennis Reinstein to prepare for deposition
12119	12/15/2014	ALC	0	6	\$ 130.00	0	0.6	0.6	\$ 78.00	Prepare final jury instructions - clean and dirty copies (40 pages)
12119	12/15/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Chad Bernards re: Yearsley's 2-11-14 deposition with exhibits
12119	12/15/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Chad Bernards re: Robert's 2-11-14 deposition with exhibits
12119	12/15/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to Chad Bernards re: Tiffany's 2-11-14 deposition with exhibits
12119	12/15/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Telephone conference with Parson's re: Reinstein's deposition
12119	12/16/2014	GLC	0	1	\$ 160.00	0	0.6	0.6	\$ 96.00	Numerous emails and phone calls with attorneys to work out complicated scheduling of depositions of Staab, Roberts, Yearsley and Tiffany
12119	12/16/2014	GLC	0	12	\$ 160.00	0	0.4	0.4	\$ 64.00	Attend telephonic hearing with Judge Neville re: scheduling Staab deposition

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Attorney Fees report

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	12/16/2014	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Mark Schoquist re: last minute pre-trial update
12119	12/16/2014	JDO	0	10	\$ 130.00	0	1.8	1.8	\$ 234.00	Review and analyze deposition of Dennis Reinstein re: supplemental report and motion in limine #13
12119	12/16/2014	JDO	0	1	\$ 130.00	0	0.4	0.4	\$ 52.00	Telephone conferences with Roberts, Yearsley, Tiffany and Zilog's counsels re: deposition of David Staab
12119	12/16/2014	JDO	0	1	\$ 130.00	0	0.2	0.2	\$ 26.00	Telephone conference with Gerry Husch re: depositions of Staab and other individual defendants
12119	12/16/2014	JDO	0	1	\$ 130.00	0	0.4	0.4	\$ 52.00	Emails with individual defendants and counsels for Zilog and ASI re: depositions of Staab and individual defendants
12119	12/18/2014	GLC	0	12	\$ 160.00	0	3.4	3.4	\$ 544.00	Drive to Boise for depositions of Roberts, Yearsley, Tiffany and Staab
12119	12/18/2014	ALC	0	6	\$ 130.00	0	2	2	\$ 260.00	Prepare trial exhibits
12119	12/19/2014	GLC	0	12	\$ 160.00	0	2.8	2.8	\$ 448.00	Attend deposition of Staab in Boise
12119	12/19/2014	GLC	0	9	\$ 160.00	0	1.8	1.8	\$ 288.00	Meet with Roberts, Yearsley and Tiffany to prepare for depositions
12119	12/19/2014	GLC	0	12	\$ 160.00	0	1.8	1.8	\$ 288.00	Defend deposition of Roberts in Boise
12119	12/19/2014	GLC	0	12	\$ 160.00	0	1.4	1.4	\$ 224.00	Defend deposition of Tiffany in Boise
12119	12/19/2014	GLC	0	12	\$ 160.00	0	1.2	1.2	\$ 192.00	Defend deposition of Yearsley in Boise
12119	12/19/2014	GLC	0	12	\$ 160.00	0	3.4	3.4	\$ 544.00	Drive from Boise to Pocatello after depositions
12119	12/19/2014	BS	0	6	\$ 80.00	0	0.4	0.4	\$ 32.00	Prepare pleadings for hearings on Tuesday
12119	12/19/2014	BS	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Email to insureds and adjusters re: Zilog's offer of judgment
12119	12/22/2014	JDO	0	10	\$ 130.00	0	0.4	0.4	\$ 52.00	Evaluate and analyze ASI's supplemental memorandum on motion in limine #5 (8 pages)
12119	12/22/2014	JDO	0	5	\$ 130.00	0	0.6	0.6	\$ 78.00	Research case law on federal law preemption in cases involving copyrights
12119	12/22/2014	JDO	0	5	\$ 130.00	0	0.4	0.4	\$ 52.00	Research rule civil procedure and case law re: the circumstances when co-defendants are entitled to more preemptory challenges
12119	12/22/2014	BS	0	6	\$ 80.00	0	0.8	0.8	\$ 64.00	Prepare Zilog trial exhibits for trial binder
12119	12/23/2014	GLC	0	12	\$ 160.00	0	3.2	3.2	\$ 512.00	Drive to and from Boise for pre-trial - apportioned with another case
12119	12/23/2014	GLC	0	12	\$ 160.00	0	2.2	2.2	\$ 352.00	Attend pre-trial conference in Boise
12119	12/23/2014	JDO	0	12	\$ 130.00	0	1.2	1.2	\$ 156.00	Attend pre-trial conference
12119	12/24/2014	JDO	0	6	\$ 130.00	0	2.4	2.4	\$ 312.00	Prepare deposition summaries of the personal and 30(b)(6) depositions of Douglas Hackler
12119	12/25/2014	GLC	0	9	\$ 160.00	0	6.4	6.4	\$ 1,024.00	Trial preparation - prepare direct exam for Roberts
12119	12/26/2014	GLC	0	9	\$ 160.00	0	9.4	9.4	\$ 1,504.00	Trial preparation - prepare direct exam for Roberts and Yearsley
12119	12/26/2014	JDO	0	6	\$ 130.00	0	1.2	1.2	\$ 156.00	Prepare deposition summary of the deposition of Loreli Hackler
12119	12/26/2014	JDO	0	6	\$ 130.00	0	1.4	1.4	\$ 182.00	Prepare deposition summary of the deposition of Dale Wilson
12119	12/27/2014	GLC	0	9	\$ 160.00	0	9.2	9.2	\$ 1,472.00	Trial preparation - prepare direct exam for Yearsley and Tiffany
12119	12/28/2014	GLC	0	9	\$ 160.00	0	10.2	10.2	\$ 1,632.00	Trial preparation - prepare direct exam for Lloyd and Perryman, prepare opening statement
12119	12/29/2014	GLC	0	9	\$ 160.00	0	4.2	4.2	\$ 672.00	Trial preparation - review and compare trial exhibits
12119	12/29/2014	JDO	0	1	\$ 130.00	0	0.2	0.2	\$ 26.00	Telephone conference with Judge's law clerk re: our proposed jury instructions and whether there was a claim for interference with contract against Sage
12119	12/29/2014	JDO	0	6	\$ 130.00	0	1.6	1.6	\$ 208.00	Prepare deposition summary for Chaney's deposition
12119	12/29/2014	BS	0	6	\$ 80.00	0	1.4	1.4	\$ 112.00	Prepare ASI trial exhibits for trial binder
12119	12/29/2014	BS	0	1	\$ 80.00	0	0.4	0.4	\$ 32.00	Transmit our 100 trial exhibits to Sage's personal attorney
12119	12/30/2014	GLC	0	9	\$ 160.00	0	2.6	2.6	\$ 416.00	Trial preparation - review 71 new additional exhibits
12119	12/30/2014	VM	0	10	\$ 80.00	0	1	1	\$ 80.00	Review Zilog purchase orders and forward exhibit 1-AA to Chad Bernard
12119	12/30/2014	VM	0	1	\$ 80.00	0	0.2	0.2	\$ 16.00	Transmit trial exhibit list to Janet Ellis
12119	12/31/2014	GLC	0	9	\$ 160.00	0	1.2	1.2	\$ 192.00	Trial preparation - cooperated with other counsel to finalize statement of claims (involved numerous emails and phone calls)
12119	12/31/2014	GLC	0	9	\$ 160.00	0	2.2	2.2	\$ 352.00	Trial preparation - organize files to take to Boise for trial

12-119 ASI v Sage  
Attorney Fees report

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	12/31/2014	GLC	0	9	\$ 160.00	0	1.4	1.4	\$ 224.00	Trial preparation - long telephone call with Garry Husch re: trial strategy, use of Staab's case in chief, counter designations to trial depositions proposed to be used by ASI and potential areas of conflict between Zilog and Sage
12119	12/31/2014	GLC	0	9	\$ 160.00	0	4.6	4.6	\$ 736.00	Trial preparation - evaluate and analyze critical issues to be pursued with each witness (Roberts, Yearsley, Tiffany, Lloyd, Perryman, D. Hackler, L. Hackler, Wilson and Chaney)
12119	12/31/2014	JDO	0	6	\$ 130.00	0	0.4	0.4	\$ 52.00	Prepare trial subpoena for Lorelli Hackler (2 pages)
12119	12/31/2014	JDO	0	6	\$ 130.00	0	0.2	0.2	\$ 26.00	Prepare trial subpoena for Richard Chaney (2 pages)
12119	12/31/2014	JDO	0	6	\$ 130.00	0	0.2	0.2	\$ 26.00	Prepare trial subpoena for Dale Wilson (2 pages)
12119	12/31/2014	JDO	0	6	\$ 130.00	0	0.2	0.2	\$ 26.00	Prepare acceptance of service of trial subpoenas (2 pages)
12119	12/31/2014	JDO	0	10	\$ 130.00	0	0.2	0.2	\$ 26.00	Review proposed statement of the case submitted by ASI (1 page) and suggest proposed changes
12119	12/31/2014	VM	0	6	\$ 80.00	0	0.2	0.2	\$ 16.00	Amend trial exhibits and transmit to court clerk
12119	1/1/2015	GLC	0	9	\$ 160.00	0	6.2	6.2	\$ 992.00	Trial preparation - prepare cross examination of D. Hackler
12119	1/1/2015	GLC	0	9	\$ 160.00	0	2.2	2.2	\$ 352.00	Trial preparation - prepare cross examination of L. Hackler
12119	1/1/2015	GLC	0	9	\$ 160.00	0	3.2	3.2	\$ 512.00	Trial preparation - prepare cross examination of D. Wilson
12119	1/1/2015	ALC	0	6	\$ 130.00	0	1	1	\$ 130.00	Prepare deposition summary for depositions of David Staab (1 page - reviewed 600+ pages of transcript)
12119	1/2/2015	GLC	0	9	\$ 160.00	0	5.2	5.2	\$ 832.00	Trial preparation - work on opening statement
12119	1/2/2015	JDO	0	10	\$ 130.00	0	0.4	0.4	\$ 52.00	Evaluate and analyze Zilog's contractor agreement to identify portions that mention insurance and redacted accordingly
12119	1/2/2015	VM	0	6	\$ 80.00	0	6	6	\$ 480.00	Finalize all documents and materials for trial
12119	1/2/2015	BS	0	9	\$ 80.00	0	0.2	0.2	\$ 16.00	Scan 38 ASI Exhibits for trial
12119	1/3/2015	GLC	0	9	\$ 160.00	0	7.4	7.4	\$ 1,184.00	Trial preparation - work on cross examination of ASI experts
12119	1/3/2015	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Drive to Boise for trial
12119	1/3/2015	JDO	0	12	\$ 130.00	0	3.2	3.2	\$ 416.00	Drive from Pocatello to Boise for trial
12119	1/4/2015	GLC	0	9	\$ 160.00	0	12.4	12.4	\$ 1,984.00	Trial preparation - Roberts, Yearsley, Tiffany and Perryman
12119	1/4/2015	JDO	0	9	\$ 130.00	0	7.2	7.2	\$ 936.00	Trial preparation with Roberts, Yearsley, Tiffany and Perryman reviewing and discussing ASI's proposed exhibits and potential questions from ASI counsel
12119	1/5/2015	JDO	0	12	\$ 130.00	0	9.2	9.2	\$ 1,196.00	Attend Trial - Voir Dire and Plaintiff's opening
12119	1/5/2015	GLC	0	12	\$ 160.00	0	9.2	9.2	\$ 1,472.00	Attend Trial - preliminary motions, jury voir dire, Plaintiff opening
12119	1/5/2015	GLC	0	9	\$ 160.00	0	1.4	1.4	\$ 224.00	Work on opening statement
12119	1/6/2015	JDO	0	12	\$ 130.00	0	9.6	9.6	\$ 1,248.00	Attend Trial - assisted with presentation of exhibits, tracked admitted exhibits and took notes of testimony
12119	1/6/2015	GLC	0	12	\$ 160.00	0	9.6	9.6	\$ 1,536.00	Attend Trial - Defense openings, Doug Hackler direct and cross examinations
12119	1/6/2015	GLC	0	9	\$ 160.00	0	3.2	3.2	\$ 512.00	Prepare Dave Roberts for direct and cross examination
12119	1/7/2015	JDO	0	12	\$ 130.00	0	8.8	8.8	\$ 1,144.00	Attend Trial - assisted with presentation of exhibits, tracked admitted exhibits and took notes of testimony
12119	1/7/2015	GLC	0	12	\$ 160.00	0	9.2	9.2	\$ 1,472.00	Attend Trial - Doug Hackler cross and re-direct examination, Loreli Hackler, Rich Chaney direct and cross examination
12119	1/7/2015	GLC	0	9	\$ 160.00	0	2.8	2.8	\$ 448.00	Prepare Dave Roberts for direct and cross examination
12119	1/8/2015	JDO	0	12	\$ 130.00	0	8.2	8.2	\$ 1,066.00	Attend Trial - assisted with presentation of exhibits, tracked admitted exhibits and took notes of testimony
12119	1/8/2015	GLC	0	12	\$ 160.00	0	8.2	8.2	\$ 1,312.00	Attend Trial - arguments on motion in limine #11, Dale Wilson direct and cross examination, Sean Beck direct and cross examination, Sonia Dayley direct and cross examination
12119	1/8/2015	GLC	0	9	\$ 160.00	0	3.2	3.2	\$ 512.00	Prepare Perryman, Yearsley and Tiffany for direct and cross examination
12119	1/9/2015	JDO	0	12	\$ 130.00	0	9.4	9.4	\$ 1,222.00	Attend Trial - assisted with presentation of exhibits, tracked admitted exhibits and took notes of testimony
12119	1/9/2015	GLC	0	12	\$ 160.00	0	9.4	9.4	\$ 1,504.00	Attend Trial - Alan Shaw direct and cross examination, Steve Darrough by video, Rick White by deposition, Russell Lloyd direct and cross examination, Perryman direct and cross examination



12-119 ASI v Sage  
Attorney Fees report

Case	Trans Date	User	Bill Co	Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	1/9/2015	GLC	0	9	\$ 160.00	0	2.4	2.4	\$ 384.00	Prepare Yearsley and Tiffany for direct and cross examination
12119	1/10/2015	JDO	0	12	\$ 130.00	0	6.6	6.6	\$ 858.00	Attend Trial - assisted with presentation of exhibits, tracked admitted exhibits and took notes of testimony
12119	1/10/2015	GLC	0	12	\$ 160.00	0	6.6	6.6	\$ 1,056.00	Attend Trial - David Roberts direct and cross examination, Tiffany direct and cross examination, Yearsley direct and cross examination
12119	1/10/2015	GLC	0	6	\$ 160.00	0	4.6	4.6	\$ 736.00	Outline evidence to date for use in closing
12119	1/11/2015	JDO	0	9	\$ 130.00	0	3.2	3.2	\$ 416.00	Meet with counsel for Zilog and David Staab re: his testimony, to discuss the progress of the trial and arguments for directed verdict
12119	1/11/2015	JDO	0	6	\$ 130.00	0	1.2	1.2	\$ 156.00	Prepare proposed special verdict form (5 pages) and send to parties and court
12119	1/11/2015	GLC	0	6	\$ 160.00	0	2.6	2.6	\$ 416.00	Continue to outline evidence to date for use in closing
12119	1/11/2015	GLC	0	9	\$ 160.00	0	3.2	3.2	\$ 512.00	Meet with Husch, Rosholt, Oborn and Cooper for telephone interview of Staab to prepare for trial
12119	1/11/2015	GLC	0	9	\$ 160.00	0	2.4	2.4	\$ 384.00	Prepare Reinstein for direct and cross examination
12119	1/11/2015	GLC	0	9	\$ 160.00	0	2.8	2.8	\$ 448.00	Prepare cross examination of Hoffman and Holland
12119	1/12/2015	JDO	0	12	\$ 130.00	0	8.6	8.6	\$ 1,118.00	Attend Trial - assisted with presentation of exhibits, tracked admitted exhibits and took notes of testimony
12119	1/12/2015	GLC	0	12	\$ 160.00	0	8.6	8.6	\$ 1,376.00	Attend Trial - expert preliminary motions, Steve Holland direct and cross examination, Rick Hoffman direct and cross examination, Meet with Reinstein to prepare for direct, Dennis Reinstein direct and cross examination
12119	1/12/2015	GLC	0	9	\$ 160.00	0	1.8	1.8	\$ 288.00	Prepare direct of Staab and directed verdict motion arguments
12119	1/13/2015	JDO	0	12	\$ 130.00	0	9.4	9.4	\$ 1,222.00	Attend Trial - assisted with presentation of exhibits, tracked admitted exhibits and took notes of testimony
12119	1/13/2015	JDO	0	6	\$ 130.00	0	0.4	0.4	\$ 52.00	Revised and updated proposed special verdict form after claims were dismissed on directed verdict and the proposed form was discussed with counsel and court
12119	1/13/2015	GLC	0	12	\$ 160.00	0	9.4	9.4	\$ 1,504.00	Attend Trial - Staab direct and cross examination, Offer of Proof on tools, Directed verdict motions, Counterclaim evidence through Roberts, Yearsley and Tiffany
12119	1/13/2015	GLC	0	6	\$ 160.00	0	2.2	2.2	\$ 352.00	Prepare special verdict and objections to instructions offered by Plaintiffs
12119	1/14/2015	JDO	0	12	\$ 130.00	0	3.6	3.6	\$ 468.00	Attend Trial - assisted with presentation of exhibits, tracked admitted exhibits and took notes of testimony
12119	1/14/2015	GLC	0	12	\$ 160.00	0	3.6	3.6	\$ 576.00	Attend Trial - direct and cross examination of Wilson on defense of counterclaim, direct and cross examination of Doug Hackler and Loreli Hackler on rebuttal, motion for directed verdict on counterclaim
12119	1/14/2015	GLC	0	6	\$ 160.00	0	7.4	7.4	\$ 1,184.00	Prepare closing statement
12119	1/15/2015	JDO	0	12	\$ 130.00	0	8.6	8.6	\$ 1,118.00	Attend Trial - assisted with presentation of exhibits, tracked admitted exhibits and took notes of testimony
12119	1/15/2015	GLC	0	12	\$ 160.00	0	8.6	8.6	\$ 1,376.00	Attend Trial - jury instructions conference, instructions to the jury, prepare for closing and closing statements
12119	1/16/2015	JDO	0	12	\$ 130.00	0	7.2	7.2	\$ 936.00	Attend Trial - available for jury questions, met with clients, received verdict
12119	1/16/2015	JDO	0	12	\$ 130.00	0	3.2	3.2	\$ 416.00	Drive to Pocatello from Boise after trial
12119	1/16/2015	GLC	0	12	\$ 160.00	0	8.8	8.8	\$ 1,408.00	Attend Trial - on call for jury questions, take verdict, meet with clients
12119	1/16/2015	GLC	0	12	\$ 160.00	0	3.8	3.8	\$ 608.00	Drive from Boise to Pocatello after trial
12119	1/17/2015	GLC	0	1	\$ 160.00	0	2.8	2.8	\$ 448.00	Telephone conference with Bernards and Husch re: jury verdict, analysis of jury verdict and post-verdict report
12119	1/19/2015	GLC	0	1	\$ 160.00	0	0.4	0.4	\$ 64.00	Telephone conference with Mark Schoquist re: Farmer's analysis of defense strategy going forward
12119	1/19/2015	GLC	0	3	\$ 160.00	0	0.4	0.4	\$ 64.00	Email to insureds re: payment of judgement and issues of attorney fees and appeal
12119	1/19/2015	JDO	0	10	\$ 130.00	0	0.4	0.4	\$ 52.00	Review and analyze case law re: attorney fee based on provision in contract - read five cases where attorney fees were awarded based on party that did not prevail on all claims or prevailed on key issues
12119	1/20/2015	GLC	0	3	\$ 160.00	0	0.4	0.4	\$ 64.00	Email to Zarian re: settlement possibilities
12119	1/20/2015	GLC	0	10	\$ 160.00	0	0.2	0.2	\$ 32.00	Evaluate and analyze proposed judgment from Zarian/Luvai
12119	1/20/2015	JDO	0	6	\$ 130.00	0	2.8	2.8	\$ 364.00	Prepare memorandum of attorney fees (8 pages)
12119	1/21/2015	JDO	0	7	\$ 130.00	0	0.6	0.6	\$ 78.00	Review and edit judgment proposed by ASI to conform with the results of the trial and email same to all parties

2/2/2015

12-119 ASI v Sage  
Attorney Fees report

Case	Trans Date	User	Bill Co Tcode	Rate	Units	Hrs Wrkd	Hrs Billed	Amount	Description
12119	1/21/2015	JDO	0 10	\$ 130.00	0	0.2	0.2	\$ 26.00	Evaluate and analyze changes to proposed judgment offered by ASI
12119	1/21/2015	JDO	0 1	\$ 130.00	0	0.2	0.2	\$ 26.00	Telephone conference with Russell Metcalf, original counsel for Sage Defendants to discuss the amount of attorney fees he expended in defending the case
12119	1/22/2015	JDO	0 5	\$ 130.00	0	0.4	0.4	\$ 52.00	Research whether attorney fee awards can exceed the amount actually incurred by the client in Idaho - read and evaluated eight cases
12119	1/22/2015	JDO	0 6	\$ 130.00	0	0.2	0.2	\$ 26.00	Add additional page of authority and argumentation to memorandum of attorney fees explaining why fees can be awarded in excess of the amount actually incurred

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1329.1 Total Hours  
\$ 201,693.00 Total Fees



# RUSSELL G. METCALF, PLLC

ATTORNEY AND COUNSELOR

Homedale Office  
E-mail: [russellgmetcalf@gmail.com](mailto:russellgmetcalf@gmail.com)  
Telephone: 208-337-4945  
Facsimile: 208-337-4854  
17 E. Wyoming Avenue  
P. O. Box 385  
Homedale, ID 83628

Nampa Office  
E-mail: [russellgmetcalf@gmail.com](mailto:russellgmetcalf@gmail.com)  
Telephone: 208-337-4945  
812 12<sup>th</sup> Ave. South, Ste. E  
Nampa, ID 83651  
(by appointment only)

SENT VIA E-MAIL

January 21, 2015

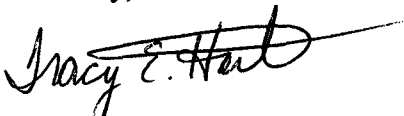
John David Oborn  
Cooper and Larsen, Chtd.  
P.O. Box 4229  
Pocatello, ID  
[jd@cooper-larsen.com](mailto:jd@cooper-larsen.com)

Dear JD,

Enclosed please find Mr. Metcalf's itemized fees in the Sage Silicon Solutions as per requested.

Should you have any questions please do not hesitate to call.

Sincerely,



Tracy E. Hart  
Assistant to Russell G. Metcalf

# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628  
Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
12/31/2010	Balance forward		0.00
04/13/2012	Conference w/Gyle to discuss concerns regarding discovery extensions and other issues in case; Discuss need to set up conference call --- Conference, 0.5 @ \$175.00 = 87.50	87.50	87.50
04/16/2012	Conference w/Gyle and Dave to discuss pleadings that need to be prepared to take more offensive position in case --- Conference, 0.5 @ \$175.00 = 87.50	87.50	175.00
04/20/2012	Commence outline and draft discovery requests to support counterclaims --- Outline, 2.4 @ \$175.00 = 420.00	420.00	595.00
04/23/2012	Review Plaintiff's Answer to Counterclaims in preparation for drafting additional Discovery Requests; Continue outline and draft discovery requests; Email draft of discovery requests to Gyle and Dave for review --- Review, 1.8 @ \$175.00 = 315.00	315.00	910.00
04/27/2012	Scan pleadings and send email to Dave and Gyle attaching documents to be reviewed prior to sending second round of Discovery Requests --- Miscellaneous, 0.3 @ \$175.00 = 52.50	52.50	962.50

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00

# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628  
Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
04/30/2012	Transfer from Nampa office --- Transfer from Nampa Office, 1 @ \$227.50 = 227.50	227.50	1,190.00
04/30/2012	Copies for the Month --- Copies, 31 @ \$0.20 = 6.20	6.20	1,196.20
05/01/2012	Finalize second Discovery --- Finalize, 0.4 @ \$175.00 = 70.00	70.00	1,266.20
05/01/2012	Review email from D. Roberts and incorporate additional requests into discovery; Respond to Roberts email and copy email to G. Cooper for defense --- Review, 2.1 @ \$175.00 = 367.50	367.50	1,633.70
05/09/2012	Review email from D. Roberts outlining bullet points for information that was redacted from document production to ASI --- Review, 0.2 @ \$175.00 = 35.00	35.00	1,668.70
05/14/2012	PMT #5073.	-1,196.20	472.50
05/16/2012	Conference w/Barbie to discuss documents to be disclosed with David's Affidavit --- Conference, 0.3 @ \$175.00 = 52.50	52.50	525.00

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00

# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628  
Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
05/22/2012	Review Affidavits of D. Roberts and S. Darrough prepared in Support of Opposition to Motion to Compel; Review email from D. Roberts re: provision of offer of judgment for amount certain and to determine whether offer is reasonable --- Review, 0.8 @ \$175.00 = 140.00	140.00	665.00
05/24/2012	Conference w/G. Cooper to discuss issues that will be addressed at hearing on Motion to Compel --- Conference, 0.3 @ \$175.00 = 52.50	52.50	717.50
05/25/2012	Prepare for, travel to and attend hearing on motion to compel discovery of confidential information --- Prepare, 5 @ \$175.00 = 875.00	875.00	1,592.50
05/29/2012	Conference w/Gary Cooper to discuss approach to hearing on Motion to Compel --- Conference, 0.3 @ \$175.00 = 52.50	52.50	1,645.00
05/30/2012	Copies for the Month --- Copies, 111 @ \$0.20 = 22.20	22.20	1,667.20
05/30/2012	Faxes per page for the month --- Fax, 3 @ \$0.50 = 1.50	1.50	1,668.70
05/30/2012	Postage for the month --- Postage, 4 @ \$0.45 = 1.80	1.80	1,670.50

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00

# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628

Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
06/04/2012	Conference w/Gary Cooper, Gyle, Dave and Bill to discuss disclosure of invoices and explanation of "design" language --- Conference, 1 @ \$175.00 = 175.00	175.00	1,845.50
06/15/2012	PMT #5074.	-1,670.50	175.00
06/30/2012	Faxes per page for the month --- Fax, 42 @ \$0.50 = 21.00	21.00	196.00
07/13/2012	Conference w/Parsons, Behle, Latimer re: whether Perryman and Lloyd are parties to lawsuit --- Conference, 0.3 @ \$175.00 = 52.50	52.50	248.50
07/16/2012	Review and execute stipulation to continue deadlines and hearing date --- Review, 0.3 @ \$175.00 = 52.50	52.50	301.00
07/19/2012	PMT #5075.	-196.00	105.00
07/31/2012	Copies for the Month --- Copies, 9 @ \$0.20 = 1.80	1.80	106.80
07/31/2012	Faxes per page for the month --- Fax, 12 @ \$0.50 = 6.00	6.00	112.80
07/31/2012	Review proposed Protective Order and conference with G. Cooper to review the same --- Review, 0.5 @ \$175.00 = 87.50	87.50	200.30

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00



# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628  
Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
08/16/2012	Conference w/Cheryl Dunham to discuss need for documents on behalf of Zilog --- Conference, 1 @ \$175.00 = 175.00	175.00	375.30
08/16/2012	PMT #5076.	-200.30	175.00
08/21/2012	Copies for the Month --- Copies, 1 @ \$48.83 = 48.83	48.83	223.83
09/04/2012	Review supplemental objection to Motion for Protective Order and Proposed Protective Order --- Review, 0.5 @ \$175.00 = 87.50	87.50	311.33
09/05/2012	Copies for the Month --- Copies, 1 @ \$56.25 = 56.25	56.25	367.58
09/10/2012	Finalize and send billing for copies --- Finalize, 0.3 @ \$175.00 = 52.50	52.50	420.08
09/17/2012	PMT #5077.	-223.83	196.25
09/21/2012	Executed Stipulation to Extend Deadline for Service of Complaint on Zilog --- Miscellaneous, 0.3 @ \$175.00 = 52.50	52.50	248.75
09/28/2012	Faxes per page for the month --- Fax, 27 @ \$0.50 = 13.50	13.50	262.25
10/19/2012	PMT #5078.	-262.25	0.00

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00

# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628  
Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
11/16/2012	Review and execute Stipulation to Extend Service Deadline for Service on Zilog --- Review, 0.3 @ \$175.00 = 52.50 PMT #5079.	52.50	52.50
12/27/2012		-52.50	0.00
01/30/2013	--- CD/DVD w/Case, 1 @ \$1.50 = 1.50	1.50	1.50
01/30/2013	--- Postage - Additional ounces, 1 @ \$0.20 = 0.20	0.20	1.70
01/30/2013	Postage for the month --- Postage, 4 @ \$0.45 = 1.80	1.80	3.50
01/30/2013	Copies for the Month --- Copies, 3 @ \$0.20 = 0.60	0.60	4.10
02/15/2013	Conference w/C. Dunham to discuss Discovery questions (resolve that she will call Cooper's office and ensure that they have additional Discovery documents) --- Conference, 0.3 @ \$175.00 = 52.50	52.50	56.60
03/11/2013	Conference w/G. Cooper, B. Tiffany, D. Roberts, G. Yearsley to discuss letter to concerns with responses --- Conference, 0.5 @ \$175.00 = 87.50	87.50	144.10
03/14/2013	PMT #5081.	-56.60	87.50

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00

# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628

Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
03/15/2013	Conference w/B. Tiffany to discuss status of case and where the parties are in the litigation process (focus on Bill's concerns that case is not progressing) --- Conference, 0.4 @ \$175.00 = 70.00	70.00	157.50
03/20/2013	Review letter from G. Cooper to J. Zarian responding to Zarian's letter addressing Discovery concerns --- Review, 0.3 @ \$175.00 = 52.50	52.50	210.00
03/31/2013	Faxes per page for the month --- Fax, 8 @ \$0.50 = 4.00	4.00	214.00
04/02/2013	Conference w/V. Meyer (Cooper's paralegal) re: Discovery documents that may or may not have been produced; Go through all Discovery documents and identify two stacks (emails between Sage members) that may not have been produced --- Conference, 1.2 @ \$175.00 = 210.00	210.00	424.00
04/05/2013	Participate in conference call with G. Cooper and Sage members --- Conference, 1 @ \$175.00 = 175.00	175.00	599.00
04/08/2013	Locate information provided t ASI re: software utilized by Sage and send email to G. Cooper and clients enclosing information --- Miscellaneous, 0.3 @ \$175.00 = 52.50	52.50	651.50
04/18/2013	PMT #5082.	-214.00	437.50

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00

# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628

Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
05/06/2013	Review letter dated May 3, 2013, from J. Zarian re: Discovery issues --- Review, 0.3 @ \$175.00 = 52.50	52.50	490.00
05/10/2013	Conference call w/G. Cooper, G. Yearsley, D. Roberts and W. Tiffany to discuss Discovery issues addressed in J. Zarian letter --- Conference, 1 @ \$175.00 = 175.00	175.00	665.00
05/13/2013	PMT #5083.	-437.50	227.50
05/31/2013	Copies for the Month --- Copies, 4 @ \$0.20 = 0.80	0.80	228.30
06/18/2013	Review Declaration of J. Zarian and Motion to Compel --- Review, 0.5 @ \$175.00 = 87.50	87.50	315.80
06/24/2013	PMT #5084.	-228.30	87.50
07/19/2013	PMT #5085.	-87.50	0.00
08/07/2013	Review Zilog Notice of Appearance and Reservation of Defenses --- Review, 0.3 @ \$175.00 = 52.50	52.50	52.50
08/29/2013	Review tender letter from G Husch (Zilog counsel) requesting confirmation of obligation to defend and indemnify Zilog; Conference w/G. Cooper re: tender letter; Outline and draft response letter to G. Husch --- Review, 1.5 @ \$175.00 = 262.50	262.50	315.00

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00

# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628  
Phone # 208-337-4945

Date
12/31/2014

To:

Sage Silicon Solutions c/o Gyle Yearsley 11812 West Giants Drive Boise, ID 83709
---

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
08/29/2013	Finalize and send letter to Husch --- Finalize, 0.3 @ \$175.00 = 52.50	52.50	367.50
08/30/2013	Faxes per page for the month --- Fax, 6 @ \$0.50 = 3.00	3.00	370.50
08/30/2013	Postage for the month --- Postage, 4 @ \$0.46 = 1.84	1.84	372.34
08/30/2013	Conference w/M. Shoquist to discuss tender letter and position to take with regard to request for representation from Zilog --- Conference, 0.4 @ \$175.00 = 70.00	70.00	442.34
08/30/2013	Copies for the Month --- Copies, 87 @ \$0.20 = 17.40	17.40	459.74
09/23/2013	PMT #5086.	-459.74	0.00
09/30/2013	Faxes per page for the month --- Fax, 8 @ \$0.50 = 4.00	4.00	4.00
09/30/2013	Review letter from G. Husch to Farmer's Insurance requesting indemnification --- Review, 0.3 @ \$175.00 = 52.50	52.50	56.50
10/01/2013	Review letter from Moffatt Thomas requesting insurance policy --- Review, 0.3 @ \$175.00 = 52.50	52.50	109.00

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00

# Russell G Metcalf

## Statement

PO Box 385

Homedale, ID 83628

Phone #

208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
10/04/2013	Conference w/G. Cooper to request copy of insurance policy to send to counsel for Zilog --- Conference, 0.3 @ \$175.00 = 52.50	52.50	161.50
10/07/2013	Review Discovery Requests filed by Zilog --- Review, 0.3 @ \$175.00 = 52.50	52.50	214.00
10/15/2013	PMT #5087.	-56.50	157.50
10/17/2013	Review opposition to Motion to Vacate and reset hearing on Motion to Compel; Calendar new hearing date --- Review, 0.2 @ \$175.00 = 35.00	35.00	192.50
10/31/2013	Faxes per page for the month --- Fax, 22 @ \$0.50 = 11.00	11.00	203.50
11/19/2013	PMT #5088.	-203.50	0.00
11/29/2013	Faxes per page for the month --- Fax, 16 @ \$0.50 = 8.00	8.00	8.00
12/31/2013	Faxes per page for the month --- Fax, 144 @ \$0.50 = 72.00	72.00	80.00
01/08/2014	Review emails from G. Cooper re: representation on additional claims; Conference w/Gyle to discuss position that I will continue to take no action and allow Gary to handle --- Review, 0.3 @ \$175.00 = 52.50	52.50	132.50

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00

# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628  
Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
01/20/2014	PMT #05089.	-80.00	52.50
01/31/2014		59.00	111.50
	Faxes per page for the month		
	--- Fax, 118 @ \$0.50 = 59.00		
02/10/2014	PMT #005090.	-111.50	0.00
02/28/2014		51.50	51.50
	Faxes per page for the month		
	--- Fax, 103 @ \$0.50 = 51.50		
03/17/2014	PMT #05091.	-51.50	0.00
03/25/2014		52.50	52.50
	Conference w/Gyle to discuss Petition for Declaratory Judgment		
	--- Conference, 0.3 @ \$175.00 = 52.50		
03/26/2014		140.00	192.50
	Conference w/W. Tiffany re: Declaratory Judgment action; Draft email to G. Husch to inquire into Zilog's position on DEC action; Forward email to David, Gyle and Bill for review		
	--- Conference, 0.8 @ \$175.00 = 140.00		
03/26/2014		52.50	245.00
	Conference w/Gyle to discuss possible Discovery Requests		
	--- Conference, 0.3 @ \$175.00 = 52.50		
03/31/2014		122.50	367.50
	Faxes per page for the month		
	--- Fax, 245 @ \$0.50 = 122.50		
03/31/2014		15.20	382.70
	Copies for the Month		
	--- Copies, 76 @ \$0.20 = 15.20		

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00

# Russell G Metcalf

## Statement

PO Box 385  
Homedale, ID 83628

Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
03/31/2014	Conference w/Gyle, Dave and Bill to discuss DEC action and need to file Notice of Appearance --- Conference, 0.6 @ \$175.00 = 105.00	105.00	487.70
04/01/2014	Outline and draft Notice of Appearance --- Outline, 0.5 @ \$175.00 = 87.50	87.50	575.20
04/02/2014	Filing fee for new action --- Filing/Cert./Recording Fees, 1 @ \$66.00 = 66.00	66.00	641.20
04/02/2014	Outline and draft letter to G. Sparling requesting continued representation pending the trial of this matter --- Outline, 0.8 @ \$175.00 = 140.00	140.00	781.20
04/02/2014	Continue outline and draft Notice of Appearance --- Outline, 0.3 @ \$175.00 = 52.50	52.50	833.70
04/02/2014	Letter to Ada County Courthouse w/NOA and filing fee --- Letter, 0.3 @ \$175.00 = 52.50	52.50	886.20
04/15/2014	PMT #05093.	-553.70	332.50
04/29/2014	Review Memorandum in Support of Motion to Compel in Discovery issue --- Review, 0.3 @ \$175.00 = 52.50	52.50	385.00

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00



# Russell G Metcalf

## Statement

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Phone # 208-337-4945

Date

12/31/2014

To:

Sage Silicon Solutions  
c/o Gyle Yearsley  
11812 West Giants Drive  
Boise, ID 83709

Account #	Amount Due
12-046C	\$0.00

Date	Transaction	Amount	Balance
04/30/2014	Faxes per page for the month --- Fax, 612 @ \$0.50 = 306.00	306.00	691.00
04/30/2014	Postage for the month --- Postage, 6 @ \$0.49 = 2.94	2.94	693.94
04/30/2014	Copies for the Month --- Copies, 34 @ \$0.20 = 6.80	6.80	700.74
05/06/2014	Conference w/Gyle to discuss settlement offer and status of case --- Conference, 0.4 @ \$175.00 = 70.00	70.00	770.74
05/12/2014	Conference w/B. Tiffany to discuss status of case; Discuss items that need to be addressed with entire group --- Conference, 1 @ \$175.00 = 175.00	175.00	945.74
05/23/2014	PMT #05094.	-700.74	245.00
06/16/2014	PMT #05095.	-245.00	0.00
06/30/2014	Faxes per page for the month --- Fax, 92 @ \$0.50 = 46.00	46.00	46.00
06/30/2014	Copies for the Month --- Copies, 6 @ \$0.20 = 1.20	1.20	47.20
07/21/2014	PMT #05096.	-47.20	0.00

					Amount Due
0.00	0.00	0.00	0.00	0.00	\$0.00



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**Job #** (35970B4)      **Invoice #** 51833B5      **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** David R. Staab 30(b)(6) Zilog, Inc.

**Date:** 3/4/2014 9:11:00 AM

**Charges:**

Volume IV - pgs 190-401

Copy of Deposition - Electronic Only

\$2.25    211    \$474.75

Exhibits 109-139 - Scanned PDF

\$0.15    48    \$7.20

Husch to Obtain Signature

6% sales tax

\$28.92    1    \$28.92

**Sub Total**      **\$510.87**

**Payments**      **\$0.00**

**Balance Due**      **\$510.87**

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**Job #** (35215B4) **Invoice #** 51598B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Gyle Yearsley - 30(b)(6) Sage Silicon

**Date:** 2/11/2014 4:28:00 PM

**Charges:**

VOLUME 2

Copy of Deposition - Electronic Only	\$2.25	75	\$168.75
Exhibits 86-88- Scanned PDF	\$0.15	33	\$4.95
Cooper to Obtain Signature			
6% sales tax	\$10.42	1	\$10.42
5/28/2014 finance charge	\$5.62	1	\$5.62

<b>Sub Total</b>	<b>\$189.74</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$189.74</b>

**REBILLING 05/28/2014**

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**Amount Due:** \$189.74

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**Billed:** 2/24/2014

**Job #** (35901B4) **Invoice #** 51601B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** William J. Tiffany 30(b)(6) Sage Silico

**Date:** 2/12/2014 9:00:00 AM

**Charges:**

VOLUME 3

Copy of Deposition - Electronic Only	\$2.25	72	\$162.00
Exhibits - Scanned PDF	\$0.15	17	\$2.55
Cooper to Obtain Signature			
6% sales tax	\$9.87	1	\$9.87
5/28/2014 finance charge	\$5.33	1	\$5.33

<b>Sub Total</b>	<b>\$179.75</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$179.75</b>

**REBILLING 05/28/2014**

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**Billed to:** Gary L. Cooper  
**Invoice #** 51601B5  
**Billed:** 2/24/2014  
**Amount Due:** \$179.75

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**Job #** (35972B4)      **Invoice #** 51944B5      **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Sonia U. Daley

**Date:** 3/12/2014 3:30:00 PM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	50	\$112.50
Exhibits - Scanned PDF	\$0.15	19	\$2.85
Husch to Obtain Signature			
6% sales tax	\$6.92	1	\$6.92

**Sub Total** \$122.27

**Payments** \$0.00

**Balance Due** \$122.27

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**Billed to:** Gary L. Cooper  
**Invoice #** 51944B5  
**Billed:** 3/17/2014  
**Amount Due:** \$122.27

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**Job #** (35973B4)      **Invoice #** 51947B5      **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions  
**Witness:** Alan Shaw  
**Date:** 3/12/2014 5:18:00 PM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	61	\$137.25
Exhibits - Scanned PDF	\$0.15	6	\$0.90
Husch to Obtain Signature			
6% sales tax	\$8.29	1	\$8.29
<b>Sub Total</b>			<b>\$146.44</b>
<b>Payments</b>			<b>\$0.00</b>
<b>Balance Due</b>			<b>\$146.44</b>

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**Billed to:** Gary L. Cooper  
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**Billed:** 3/17/2014  
**Amount Due:** \$146.44

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**Billed:** 3/17/2014

**Job #** (35971B4) **Invoice #** 51941B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Sean D. Beck

**Date:** 3/12/2014 1:00:00 PM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	57	\$128.25
Exhibits 140-142 - Scanned PDF	\$0.15	8	\$1.20
Husch to Obtain Signature			
6% sales tax	\$7.77	1	\$7.77

<b>Sub Total</b>	<b>\$137.22</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$137.22</b>

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**Billed to:** Gary L. Cooper  
**Invoice #** 51941B5  
**Billed:** 3/17/2014  
**Amount Due:** \$137.22

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**Billed:** 7/1/2014

**Job #** (36916B4) **Invoice #** 53219B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Richard L. Chaney

**Date:** 6/25/2014 10:00:00 AM

**Charges:**

Volume I

O&1 Transcript -Ecopy (AEO)	\$3.75	213	\$798.75
Confidential Redacted Transcript	\$0.50	213	\$106.50
Attendance Fee - One Day	\$150.00	1	\$150.00
Exhibits 230-297- Scanned PDF	\$0.15	173	\$25.95
6% sales tax	\$1.56	1	\$1.56
Shipping & Handling orig tx only	\$10.00	1	\$10.00

<b>Sub Total</b>	<b>\$1,092.76</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$1,092.76</b>

***We appreciate your business!***

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**Billed to:** Gary L. Cooper  
**Invoice #** 53219B5  
**Billed:** 7/1/2014  
**Amount Due:** \$1,092.76

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**Billed to:**

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Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 7/1/2014

**Job #** (36918B4) **Invoice #** 53223B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Dale G. Wilson

**Date:** 6/26/2014 9:00:00 AM

**Charges:**

Transcript Fee O&1 - Ecopy - Confidential	\$3.75	218	\$817.50
Attendance Fee - One Day	\$150.00	1	\$150.00
Exhibits - Scanned PDF	\$0.15	682	\$102.30
Shipping & Handling orig tx only	\$10.00	1	\$10.00
Original Exhibit Notebook - large	\$20.00	1	\$20.00
6% sales tax	\$7.34	1	\$7.34

<b>Sub Total</b>	<b>\$1,107.14</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$1,107.14</b>

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**Billed to:** Gary L. Cooper  
**Invoice #** 53223B5  
**Billed:** 7/1/2014  
**Amount Due:** \$1,107.14

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**Job #** (36919B4) **Invoice #** 53227B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Douglas R. Hackler

**Date:** 6/27/2014 9:00:00 AM

**Charges:**

Orig & 1 Transcript - Conf. Attys Eyes Only	\$3.75	238	\$892.50
2nd Transcript Redacted Confidential	\$0.50	238	\$119.00
Attendance Fee - One Day	\$150.00	1	\$150.00
No Exhibits			
Zarian to Obtain Signature			
Shipping & Handling orig txs	\$10.00	1	\$10.00

<b>Sub Total</b>	<b>\$1,171.50</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$1,171.50</b>

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**Amount Due:** \$1,171.50

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**Billed:** 2/24/2014

**Job #** (35311B4) **Invoice #** 51595B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** David A. Roberts - 30(b)(6) Sage Silic

**Date:** 2/11/2014 9:00:00 AM

**Charges:**

Volume I

Copy of Deposition - Electronic Only	\$2.25	224	\$504.00
Exhibits 1-85 ( Scanned PDF File)	\$0.15	435	\$65.25
Mr Cooper to Obtain Signature Electronically			
6% sales tax	\$34.16	1	\$34.16
5/28/2014 finance charge	\$18.44	1	\$18.44

<b>Sub Total</b>	<b>\$621.85</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$621.85</b>

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**Amount Due:** \$621.85

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**Billed:** 6/24/2014

**Job #** (36911B4) **Invoice #** 53116B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** David Roberts

**Date:** 6/19/2014 9:00:00 AM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	202	\$454.50
Redacted transcript	\$0.50	202	\$101.00
Exhibits - Scanned PDF	\$0.15	64	\$9.60
Coooper to Obtain Signature			
6% sales tax	\$33.91	1	\$33.91

<b>Sub Total</b>	<b>\$599.01</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$599.01</b>

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**Invoice #** 53116B5  
**Billed:** 6/24/2014  
**Amount Due:** \$599.01

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**Billed:** 2/24/2014

**Job #** (35312B4) **Invoice #** 51603B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Charles Steven Darrough - 30(b)(6) Zil

**Date:** 2/12/2014 11:02:00 AM

**Charges:**

Volume I		1	
Copy of Deposition - Electronic Only	\$2.25	71	\$159.75
Exhibits - Scanned PDF	\$0.15	109	\$16.35
Husch to Obtain Signature			
6% sales tax	\$10.57	1	\$10.57
5/28/2014 finance charge	\$5.70	1	\$5.70

<b>Sub Total</b>	<b>\$192.37</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$192.37</b>

**REBILLING 06/25/2014**

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**Billed to:** Gary L. Cooper  
**Invoice #** 51603B5  
**Billed:** 2/24/2014  
**Amount Due:** \$192.37

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**Billed:** 6/24/2014

**Job #** (36910B4) **Invoice #** 53120B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Gyle Yearsley

**Date:** 6/18/2014 1:00:00 PM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	247	\$555.75
Redacted Transcript	\$0.50	247	\$123.50
Exhibits 195-197 - Scanned PDF	\$0.15	114	\$17.10
Cooper to Obtain Signature			
6% sales tax	\$41.78	1	\$41.78

<b>Sub Total</b>	<b>\$738.13</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$738.13</b>

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**Billed to:** Gary L. Cooper  
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**Billed:** 6/24/2014  
**Amount Due:** \$738.13

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**Billed:** 6/24/2014

**Job #** (36912B4) **Invoice #** 53128B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** William J. Tiffany

**Date:** 6/20/2014 8:30:00 AM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	152	\$342.00
Exhibits 227-229 - Scanned PDF	\$0.15	9	\$1.35
Cooper to Obtain Signature			
6% sales tax	\$20.60	1	\$20.60

<b>Sub Total</b>	<b>\$363.95</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$363.95</b>

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**Billed to:** Gary L. Cooper  
**Invoice #** 53128B5  
**Billed:** 6/24/2014  
**Amount Due:** \$363.95

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**Billed:** 5/12/2014

**Job #** (36318B4) **Invoice #** 52625B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Evelyn Perryman

**Date:** 5/5/2014 2:04:00 PM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	90	\$202.50
Exhibits - Scanned PDF	\$0.15	10	\$1.50
Cooper to Obtain Signature			
6% sales tax	\$12.24	1	\$12.24

<b>Sub Total</b>	<b>\$216.24</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$216.24</b>

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**Invoice #** 52625B5  
**Billed:** 5/12/2014  
**Amount Due:** \$216.24

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**Billed:** 5/12/2014

**Job #** (36317B4) **Invoice #** 52627B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Russell B. Lloyd

**Date:** 5/5/2014 9:00:00 AM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	129	\$290.25
Exhibits - Scanned PDF	\$0.15	1	\$0.15
Escujuri to Obtain Signature			
6% sales tax	\$17.42	1	\$17.42

*Sheri Toole, CSR No 90*

<b>Sub Total</b>	<b>\$307.82</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$307.82</b>

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**Billed to:** Gary L. Cooper  
**Invoice #** 52627B5  
**Billed:** 5/12/2014  
**Amount Due:** \$307.82

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**Billed:** 2/24/2014

**Job #** (35912B4) **Invoice #** 51606B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Lloyd Dat Huynh - 30(b)(6) Zilog, Inc.

**Date:** 2/12/2014 1:40:00 PM

**Charges:**

VOLUME 2

Copy of Deposition - Electronic Only	\$2.25	40	\$90.00
Exhibits - Scanned PDF	\$0.15	24	\$3.60
Husch to Obtain Signature			
6% sales tax	\$5.62	1	\$5.62
5/28/2014 finance charge	\$3.03	1	\$3.03

<b>Sub Total</b>	<b>\$102.25</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$102.25</b>

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**Amount Due:** \$102.25

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**Job #** (36909B4) **Invoice #** 53028B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** David R. Staab - 30(b)(6)

**Date:** 6/9/2014 9:11:00 AM

**Charges:**

Copy of Deposition	\$2.25	211	\$474.75
Exhibits - Scanned PDF (156-194)	\$0.15	119	\$17.85
Husch to Obtain Signature			
6% sales tax	\$29.56	1	\$29.56

<b>Sub Total</b>	<b>\$522.16</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$522.16</b>

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**Invoice #** 53028B5  
**Billed:** 6/13/2014  
**Amount Due:** \$522.16

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**Billed:** 3/10/2014

**Job #** (35970B4) **Invoice #** 51833B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** David R. Staab 30(b)(6) Zilog, Inc.

**Date:** 3/4/2014 9:11:00 AM

**Charges:**

Volume IV - pgs 190-401

Copy of Deposition - Electronic Only	\$2.25	211	\$474.75
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Exhibits 109-139 - Scanned PDF	\$0.15	48	\$7.20
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Husch to Obtain Signature

6% sales tax	\$28.92	1	\$28.92
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5/28/2014 finance charge	\$13.26	1	\$13.26
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<b>Sub Total</b>	<b>\$524.13</b>
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<b>Payments</b>	<b>\$0.00</b>
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<b>Balance Due</b>	<b>\$524.13</b>
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**Billed to:** Gary L. Cooper

**Invoice #** 51833B5

**Billed:** 3/10/2014

**Amount Due:** \$524.13

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**Billed:** 2/24/2014

**Job #** (35910B4) **Invoice #** 51609B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** David R. Staab 30(b)(6) Zilog, Inc.

**Date:** 2/12/2014 2:33:00 PM

**Charges:**

Volume 3

Copy of Deposition - Electronic Only	\$2.25	75	\$168.75
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No Exhibits Marked

Husch to Obtain Signature

6% sales tax	\$10.13	1	\$10.13
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5/28/2014 finance charge	\$5.46	1	\$5.46
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<b>Sub Total</b>	<b>\$184.34</b>
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<b>Payments</b>	<b>\$0.00</b>
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<b>Balance Due</b>	<b>\$184.34</b>
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**Invoice #** 51609B5

**Billed:** 2/24/2014

**Amount Due:** \$184.34

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**Billed:** 9/8/2014

**Job #** (37545B4) **Invoice #** 54040B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Richard T. White

**Date:** 9/2/2014 1:00:00 PM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	146	\$328.50
Exhibits 339-350- Scanned PDF	\$0.15	24	\$3.60
Husch to Obtain Signature			
6% sales tax	\$19.93	1	\$19.93

<b>Sub Total</b>	<b>\$352.03</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$352.03</b>

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**Billed to:** Gary L. Cooper  
**Invoice #** 54040B5  
**Billed:** 9/8/2014  
**Amount Due:** \$352.03

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**Billed:** 9/3/2014

**Job #** (36917B4) **Invoice #** 53968B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Lorelli D. Hackler

**Date:** 8/27/2014 1:33:00 PM

**Charges:**

O&1 plus Rough - Attorneys Eyes Only	\$4.75	112	\$532.00
Additional Redacted Transcript	\$0.50	112	\$56.00
Attendance Fee - 1/2 Day	\$75.00	1	\$75.00
Exhibits- Scanned PDF	\$0.15	50	\$7.50
Zarian to Obtain Signature			
Shipping & Handling orig tx	\$8.00	1	\$8.00

<b>Sub Total</b>	<b>\$678.50</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$678.50</b>

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**Billed to:** Gary L. Cooper  
**Invoice #** 53968B5  
**Billed:** 9/3/2014  
**Amount Due:** \$678.50

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P.O. Box 2636 Boise, ID 83701-2636  
208-345-9611 208-345-8800 (fax)  
1-800-234-9611  
email courtreporters@m-mservice.com

Remit Payment [ ]

**NORTHERN OFFICE**

816 E. Sherman Ave, Ste. 7  
Coeur d'Alene, ID 83814-4921  
208-765-1700 208-765-8097 (fax)  
1-800-879-1700  
email csmith@mmcourt.com

Remit Payment [ ]

001713



**Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 10/20/2014

**Job #** (37963B4)      **Invoice #** 54562B5      **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Douglas R. Hackler

**Date:** 10/15/2014 1:30:00 PM

**Charges:**

Volume II

Copy of Deposition - Electronic Only	\$2.25	15	\$33.75
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No Exhibits Marked

Zarian to Obtain Signature

6% sales tax	\$2.03	1	\$2.03
--------------	--------	---	--------

<b>Sub Total</b>	<b>\$35.78</b>
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<b>Payments</b>	<b>\$0.00</b>
-----------------	---------------

<b>Balance Due</b>	<b>\$35.78</b>
--------------------	----------------

*We appreciate your business!*

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 54562B5  
**Billed:** 10/20/2014  
**Amount Due:** \$35.78

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-mservice.com

**Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 10/13/2014

**Job #** (37881B4)      **Invoice #** 54488B5      **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Monte Dalrymple

**Date:** 10/8/2014 1:40:00 PM

**Charges:**

Volume I

Copy of Transcript - Confidential & Redacted	\$2.75	126	\$346.50
Exhibits 375-379- Scanned PDF	\$0.15	51	\$7.65
Husch to Obtain Signature			
6% sales tax	\$21.25	1	\$21.25

<b>Sub Total</b>	<b>\$375.40</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$375.40</b>

*We appreciate your business!*

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 54488B5  
**Billed:** 10/13/2014  
**Amount Due:** \$375.40

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-mservice.com

**Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 10/13/2014

**Job #** (37880B4)      **Invoice #** 54485B5      **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Charles R. Donohoe

**Date:** 10/8/2014 9:05:00 AM

**Charges:**

Copy of Transcript (Confidential + Redacted)	\$2.75	111	\$305.25
Exhibits 364-374 - Scanned PDF	\$0.15	68	\$10.20
6% sales tax	\$18.93	1	\$18.93
Husch to Obtain Signature			

<b>Sub Total</b>	<b>\$334.38</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$334.38</b>

***We appreciate your business!***

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 54485B5  
**Billed:** 10/13/2014  
**Amount Due:** \$334.38

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-m-service.com

**Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 10/13/2014

**Job #** (37879B4) **Invoice #** 54491B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** John M. Janzen, EdD, CRC

**Date:** 10/7/2014 9:00:00 AM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	132	\$297.00
Exhibits 351-363 - Scanned PDF	\$0.15	130	\$19.50
M&M to Obtain Signature			
6% sales tax	\$18.99	1	\$18.99

<b>Sub Total</b>	<b>\$335.49</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$335.49</b>

*We appreciate your business!*

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 54491B5  
**Billed:** 10/13/2014  
**Amount Due:** \$335.49

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-m-service.com

M&M COURT REPORTING SERVICE  
26-2913728

12-119  
**M&M**

**Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 11/10/2014

**Job #** (38037B4) **Invoice #** 54814B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Dennis R. Reinstein, CPA

**Date:** 11/5/2014 1:30:00 PM

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	171	\$384.75
Exhibits - Scanned PDF	\$0.15	27	\$4.05
Husch to Obtain Signature			
6% sales tax	\$23.33	1	\$23.33

<b>Sub Total</b>	<b>\$412.13</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$412.13</b>

*We appreciate your business!*

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 54814B5  
**Billed:** 11/10/2014  
**Amount Due:** \$412.13

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-m-service.com

001718

## M&amp;M COURT REPORTING SERVICE

26-2913728

12-119  
**M&M****Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 11/3/2014**Job #** (37981B4) **Invoice #** 54725B5 **Claim #****Case:** American Semiconductor v. Sage Silicon Solutions**Witness:** Stephen D. Holland**Date:** 10/30/2014 9:00:00 AM**Charges:**

1/2 cost of O&2 Transcript Expert + Expedite \$9.50	\$4.75	112	\$532.00
Partial Cost of Attendance Fee \$150	\$75.00	1	\$75.00
Exhibits 381-382 - Scanned PDF	\$0.15	130	\$19.50
Zarian to Obtain Signature			
Shipping & Handling original only	\$12.00	1	\$12.00
6% sales tax	\$1.17	1	\$1.17

<b>Sub Total</b>	<b>\$639.67</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$639.67</b>

***We appreciate your business!***

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 54725B5  
**Billed:** 11/3/2014  
**Amount Due:** \$639.67

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-mservice.com

001719

M&M COURT REPORTING SERVICE  
26-2913728

12-119  
**M&M**

**Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 11/3/2014

**Job #** (38073B4) **Invoice #** 54729B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Richard S. Hoffman, CPA, ABV

**Date:** 10/30/2014 1:42:00 PM

**Charges:**

1/2 Cost of O&2 Trans Expert + Expedite \$9.50	\$4.75	105	\$498.75
Exhibits 383-393 - Scanned PDF	\$0.15	65	\$9.75
6% sales tax	\$0.59	1	\$0.59
Zarian to Obtain Signature			

<b>Sub Total</b>	<b>\$509.09</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$509.09</b>

*We appreciate your business!*

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 54729B5  
**Billed:** 11/3/2014  
**Amount Due:** \$509.09

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: [courtreporters@m-mservice.com](mailto:courtreporters@m-mservice.com)

001720



12-119

**Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 12/18/2014

**Job #** (38412B4)      **Invoice #** 55235B5      **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Dennis R. Reinstein, CPA

**Date:** 12/16/2014 10:00:00 AM

**Charges:**

Volume II

Copy with rough draft provided	\$3.25	88	\$286.00
Exhibits - Scanned PDF	\$0.15	15	\$2.25
Mr Husch to Obtain Signature			
6% sales tax	\$17.30	1	\$17.30

<b>Sub Total</b>	<b>\$305.55</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$305.55</b>

*We appreciate your business!*

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 55235B5  
**Billed:** 12/18/2014  
**Amount Due:** \$305.55

M&M Court Reporting Service  
P.O. Box 2636  
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Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-mservice.com

001721



**Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 12/22/2014

**Job #** (38463B4)      **Invoice #** 55279B5      **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** David Staab - 30(b)(6) Zilog

**Date:** 12/19/2014 8:00:00 AM

**Charges:**

Copy with rough draft provided	\$3.25	111	\$360.75
Volume VII			
Exhibits 403-460 - Scanned PDF	\$0.15	133	\$19.95
Husch to Obtain Signature			
6% sales tax	\$22.84	1	\$22.84

<b>Sub Total</b>	<b>\$403.54</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$403.54</b>

*We appreciate your business!*

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 55279B5  
**Billed:** 12/22/2014  
**Amount Due:** \$403.54

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-msservice.com



12-119

**Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
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P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 12/22/2014

**Job #** (38411B4) **Invoice #** 55270B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Gyle Yearsley

**Date:** 12/19/2014 2:30:00 PM

**Charges:**

Volume V (pgs 622-684)

Copy with rough draft provided (Ecopy)	\$3.25	63	\$204.75
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No Exhibits Marked

Mr Cooper to Obtain Signature

6% sales tax	\$12.29	1	\$12.29
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<b>Sub Total</b>	<b>\$217.04</b>
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<b>Payments</b>	<b>\$0.00</b>
-----------------	---------------

<b>Balance Due</b>	<b>\$217.04</b>
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***We appreciate your business!***

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 55270B5  
**Billed:** 12/22/2014  
**Amount Due:** \$217.04

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-mservice.com

001723



**Billed to:**

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 12/22/2014

**Job #** (38410B4)      **Invoice #** 55276B5      **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** William J. Tiffany

**Date:** 12/19/2014 1:00:00 PM

**Charges:**

Copy with rough draft provided      \$3.25      67      \$217.75

No Exhibits

Cooper to Obtain Signature

6% sales tax      \$13.07      1      \$13.07

**Sub Total**      \$230.82

**Payments**      \$0.00

**Balance Due**      \$230.82

***We appreciate your business!***

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 55276B5  
**Billed:** 12/22/2014  
**Amount Due:** \$230.82

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-mservice.com



**Billed to:**

**Billed:** 12/22/2014

Gary L. Cooper  
Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Job #** (38409B4)      **Invoice #** 55273B5      **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** David A. Roberts

**Date:** 12/19/2014 10:30:00 AM

**Charges:**

Volume III

Copy with rough draft provided	\$3.25	83	\$269.75
Exhibits 461- 510 Scanned PDF	\$0.15	64	\$9.60
Cooper to Obtain Signature			
6% sales tax	\$16.76	1	\$16.76

**Sub Total** \$296.11

**Payments** \$0.00

**Balance Due** \$296.11

*We appreciate your business!*

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 55273B5  
**Billed:** 12/22/2014  
**Amount Due:** \$296.11

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P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-mservice.com

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12-119  
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JAN 12 2015



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Cooper & Larsen, Chtd.  
151 North Third Avenue, Ste. 210  
P.O. Box 4229  
Pocatello, ID 83205-4229

**Billed:** 10/20/2014

**Job #** (37938B4) **Invoice #** 54559B5 **Claim #**

**Case:** American Semiconductor v. Sage Silicon Solutions

**Witness:** Douglas Hackler 30(b)(6) American Semiconductor

**Date:** 10/15/2014 9:00:00 AM



**PAST DUE**

**Charges:**

Copy of Deposition - Electronic Only	\$2.25	114	\$256.50
Exhibit 380 - Scanned PDF	\$0.15	4	\$0.60
Zarian to Obtain Signature			
6% sales tax	\$15.43	1	\$15.43
Finance charge	\$6.98	1	\$6.98

<b>Sub Total</b>	<b>\$279.51</b>
<b>Payments</b>	<b>\$0.00</b>
<b>Balance Due</b>	<b>\$279.51</b>

**REBILLING AS OF 1/6/15**

(Return this section with check)

**Billed to:** Gary L. Cooper  
**Invoice #** 54559B5  
**Billed:** 10/20/2014  
**Amount Due:** \$279.51

M&M Court Reporting Service  
P.O. Box 2636  
Boise, ID 83701-2636

Contact: 208-345-9611  
800-234-9611  
Fax: 208-345-8800  
Email: courtreporters@m-m-service.com



**RON SCHILLING****ADR SERVICES**

P.O. Box 1251  
Meridian, Idaho 83680-1251

Telephone: (208) 898-0338

Fax: (208) 898-9051

January 28, 2015

Gerald T. Husch  
MOFFATT, THOMAS, BARRETT, ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829

John N. Zarian  
PARSONS BEHLE & LATIMER  
800 W. Main Street, Suite 1300  
Boise, ID 83702

Gary L. Cooper  
COOPER & LARSEN  
P.O. Box 4229  
Pocatello, ID 83205-4229

RE: *ASI v. Sage Silicon Solutions, LLC, Roberts, Yearsley, Tiffany & Zilog, Inc.*

**MEDIATOR'S FEE STATEMENT:****Preparation:**

10/13/15	Preparation	.5 hr.	
10/22/15	Preparation	.5 hr.	
10/24/15	Preparation	<u>5.5 hrs.</u>	
	Total	3.5 hrs.	
	(6.5 hrs. @ \$200.00/per hr.)	=	\$1,300.00

**Mediation Session:**

10/25/15	10:00 a.m. - 5:30 p.m.	
	(7.5 hrs. @ \$200.00/per hr.)	= \$1,500.00

**Post Mediation Session**= N/C

**TOTAL** = \$2,800.00/3 = \$933.00

**EACH PARTY PLEASE REMIT:** \$933.00

Federal Tax ID# 26-0030577

**Please make check payable to: Ronald D. Schilling****THANK YOU**





Monte J. Dalrymple  
2129 Wedgewood Way  
Livermore, CA 94550-6664

e-mail: [monted@systemyde.com](mailto:monted@systemyde.com)

## INVOICE

**SHIP TO:** Zilog, Inc.  
c/o  
Moffat Thomas Barrett Rock & Fields  
P.O. Box 829  
Boise, ID  
83701-0829

Salesperson:	Monte Dalrymple	Date of order:	15-May-2014
Payment terms:	net 30 days	Invoice date:	18-Jul-2014
Method of shipment:	.pdf via email		
Invoice number:	2014-001 (revised)		

ITEM NO.	QTY.	DESCRIPTION	PRICE EACH	AMOUNT
1	79	American Semiconductor v. Sage, et al.	105.00	8295.00

Sub-total:	8295.00
Tax:	0.00
Shipping & handling:	0.00
Previous amount owing:	0.00
Credit:	(0.00)
Total:	8295.00

SAGE PAID 1/2 \$4,147.50

001730

Monte J. Dalrymple  
2129 Wedgewood Way  
Livermore, CA 94550-6664

e-mail: [monted@systemyde.com](mailto:monted@systemyde.com)

## INVOICE

**SHIP TO:** Gerald T. Husch  
Moffat Thomas Barrett Rock & Fields  
P.O. Box 829  
Boise, ID  
83701-0829

Salesperson:	Monte Dalrymple	Date of order:	15-May-2014
Payment terms:	net 30 days	Invoice date:	01-Sep-2014
Method of shipment:	.pdf via email		
Invoice number:	2014-002		

ITEM NO.	QTY.	DESCRIPTION	PRICE EACH	AMOUNT
1	63	American Semiconductor v. Sage, et al.	105.00	6,615.00

Sub-total:	6,615.00
Tax:	0.00
Shipping & handling:	0.00
Previous amount owing:	0.00
Credit:	(0.00)
Total:	6,615.00

SAGE PAID 1/2 \$3,307.50

001731

Monte J. Dalrymple  
2129 Wedgewood Way  
Livermore, CA 94550-6664

e-mail: [monted@systemyde.com](mailto:monted@systemyde.com)

## INVOICE

**SHIP TO:** State Farm  
c/o  
Cooper & Larsen, Chartered  
P.O. Box 4229  
Pocatello, ID  
83205-4229

Salesperson:	Monte Dalrymple	Date of order:	08-Oct-2014
Payment terms:	net 30 days	Invoice date:	16-Jan-2015
Method of shipment:	USPS Priority Mail		
Invoice number:	2014-009		

ITEM NO.	QTY.	DESCRIPTION	PRICE EACH	AMOUNT
1	12	Response to Motion <i>in Limine</i> , reply to rebuttal, notes on team meeting minutes	105.00	630.00

Sub-total:	630.00
Tax:	0.00
Shipping & handling:	0.00
Previous amount owing:	0.00
Credit:	(0.00)
Total:	630.00

SAGE PAID 100%

001732

Monte J. Dalrymple  
2129 Wedgewood Way  
Livermore, CA 94550-6664

e-mail: [monted@systemyde.com](mailto:monted@systemyde.com)

## INVOICE

**SHIP TO:** State Farm  
c/o  
Cooper & Larsen, Chartered  
P.O. Box 4229  
Pocatello, ID  
83205-4229

Salesperson:		Monte Dalrymple	Date of order:		08-Oct-2014
Payment terms:		net 30 days	Invoice date:		13-Oct-2014
Method of shipment:		N/A			
Invoice number:		2014-004			
ITEM NO.	QTY.	DESCRIPTION	PRICE EACH	AMOUNT	
1	1.25	Non-productive time (driving to the airport during commute hours)	105.00	43.75	
2		Airfare (Southwest, Oakland to Boise)	338.10	112.70	
3		Taxi (from airport, Boise)	15.00	5.00	
4	3.5	Deposition	105.00	0.00	
5		Taxi (to airport, Boise)	15.00	5.00	
6		Airfare (Southwest, Boise to Oakland)	338.10	112.70	
7		Airport parking	22.00	7.33	
8	0.75	Non-productive time (driving from the airport)	105.00	26.25	
			Sub-total:	312.73	
			Tax:	0.00	
			Shipping & handling:	0.00	
			Previous amount owing:	0.00	
			Credit:	(0.00)	
			Total:	312.73	

SAGE PAID 100%

001733

# MOFFATT THOMAS

Attorneys at Law

Randall A. Peterman  
Mark S. Prusynski  
Stephen R. Thomas  
Gerald T. Husch  
Scott L. Campbell  
Patricia M. Olsson  
Christine E. Nicholas  
Bradley J. Williams  
Lee Radford

James L. Martin  
C. Clayton Gill  
David P. Gardner  
Julian E. Gabiola  
Jon A. Stenquist  
C. Edward Carther III  
Mark C. Peterson  
Tyler J. Anderson  
Andrew J. Waldera

David K. Penrod  
Blake G. Swenson  
Benjamin C. Ritchie  
Matthew J. McGee  
Mindy M. Willman  
Jetta Hatch Mathews  
Andrea J. Rosholt  
Kirk J. Houston  
Jamie K. Moon

Of Counsel:  
Larry C. Hunter  
Gary T. Dance  
John C. Ward  
John S. Simko  
David B. Lincoln  
Norman M. Semanko

MAILING ADDRESS:  
PO Box 829  
Boise ID 83701-0829

[www.moffatt.com](http://www.moffatt.com)

PHYSICAL ADDRESS:  
101 S Capitol Blvd 10th Fl  
Boise ID 83702-7710

208.345.2000 MAIN  
800.422.2889 TOLL-FREE  
208.385.5384 FAX

January 29, 2015  
via E-mail

John N. Zarian  
Parsons Behle & Latimer  
800 W. Main St., Suite 1300  
Boise, ID 83702

**Re: ASI v. Sage and Zilog, et al.**  
MTBR&F File No. 25332.0000

Dear Mr. Zarian:

The following defense expert witnesses have indicated that ASI has not paid them for their deposition time and related expenses, as previously agreed to by the parties.

Monte Dalrymple – Invoice No. 2014-005

1/3 for non-productive time, airfare, transportation & parking = \$312.73

3.5 hours deposition time at \$105.00/hr. = \$367.50

Total

Amount as Matter of Right \$680.23

Foot  
note

Charles Donohoe – Invoice No. 112014

1/3 for non-productive time, airfare, transportation, meals & parking = \$1,385.76

3.5 hours deposition time at \$500.00/hr. = \$1,750.00

Total

\$3,135.76

Dennis Reinstein – Invoices

November 5, 2014 - 4.4 hours deposition time at \$330.00/hr. = \$1,452.00

December 17, 2014 – 2.0 hours deposition time at \$330.00/hr. = \$660.00

Total

\$2,112.00

**TOTAL DUE**

**\$5,127.99**



INVOICE

Gerald T. Husch, Esq.

Invoice No. 092014

Moffat Thomas

September 30, 2014

101 S. Capitol Blvd., 10<sup>th</sup> Floor

Boise, Idaho 83702

ASI v. Zilog and Sage, et al.

For expert witness services rendered through September 2014

---

August 18 – Consideration of communication from counsel for Zilog -----	0.5 hrs
August 19 – Telecon with counsel for Zilog and Sage et al about the case ---	0.5 hrs
August 20 – Telecon with counsel, study of Holland Expert Report for ASI,	
Follow up questions regarding factual background -----	2 hrs
August 21 – Study of ASI and Zilog agreements and prep analysis -----	2 hrs
August 22 – Telecon with counsel and prep therefor -----	1 hr
August 23 – Prep draft outline of report -----	3 hrs
August 24 – Prep expert report draft including analysis of documents -----	3 hrs
August 27 – Prep expert report and telecon with counsel -----	3 hr
August 28 – Study of competitive relationship of Zilog and ASI -----	2 hrs
August 30 – Prep revisions to expert report -----	5 hrs
September 1 – Draft and revise expert report -----	5 hrs

September 2 – Prepare report ----- 7 hrs

September 3 – Telecon with counsel, study Zilog's MSJ and Sage facts,

prep draft expert report ----- 7 hrs

September 4 – Prep final draft and telecons with counsel ----- 6 hrs

---

Total expert witness services for 47 hrs at \$500 per hour ----- \$23,500.00

Disbursements:

None charged

---

Total Fees and Disbursements ----- \$23,500.00

Please remit payment by wire to Charles R. Donohoe, P.C., Bank of America, account  
No. 003917480312, routing No. 052001633. Bank of America, 3701 Rossmoor Ave.,  
Silver Spring, Md., 20906; Phone 301 598-6200 or by check to my address at 46  
Columbia Ave., Rehoboth Beach, DE 19971.

By: Charles R. Donohoe

SAGE PAID \$11,750



INVOICE

Gerald T. Husch, Esq.

Invoice No. 112014

Moffat Thomas

November 30, 2014

101 S. Capitol Blvd., 10<sup>th</sup> Floor

Boise, Idaho 83702

ASI v. Zilog and Sage, et al.

For expert witness services rendered through November 2014

---

October 6 – Study of the Holland report and my report, meet with counsel -- 8 hrs

October 7 – Travel to Boise from Rehoboth Beach, study of documents and

deposition transcripts, study of ASI's brief filed today, meet

with counsel ----- 8 hrs

October 8 – My deposition----- 3.5 hrs

October 9 – Return travel to Rehoboth Beach, DE ----- 4 hrs

November 11 – Study of my deposition transcripts, execute declaration and

errata sheet ----- 3.5 hrs

---

Total expert witness services for 27 hrs at \$500 per hour ----- \$13,500.00

Disbursements:

Travel from October 7 to October 9 from Rehoboth Beach, DE to

Boise, Idaho and back

Air travel to Boise from Dulles and back ----- \$1,595.20

Taxi to and from the Boise airport ----- \$30.00

Parking at Dulles airport -----

Hotel (The Grove) for 10/7 and 10/8 ----- \$508.59

Food ----- \$23.49

---

Total Disbursements ----- \$2,157.28

Total Fees and Disbursements ----- \$15,657.28

Please remit payment by wire to Charles R. Donohoe, P.C., Bank of America, account

No. 003917480312, routing No. 052001633. Bank of America, 3701 Rossmoor Ave.,

Silver Spring, Md., 20906; Phone 301 598-6200 or by check to my address at 46

Columbia Ave., Rehoboth Beach, DE 19971.

By: Charles R. Donohoe

SAGE PAID \$7,828.64

CHARLES DONOHOE INVOICE DATED 11-30-14

DATE OF SERVICE	AMOUNT \$15,657.28	ASI	ZILOG	SAGE
10-06-14	8 hrs study (productive) x \$500 = \$4,000 ÷ 2		\$2,000.00	\$2,000.00
10/07/14	8 hrs study while travel x \$500 = \$4,000 ÷ 2		\$2,000.00	\$2,000.00
10/08/14	Depo time – 3.5 hrs x \$500	\$1,750.00		
10/09/14	Return travel – (nonproductive) – 4 hrs x \$500 = \$2,000 ÷ 3	\$ 666.67	\$ 666.67	\$ 667.67
11/11/14	Review and sign depo 3.5 hrs x \$500 = \$1,750 ÷ 2		\$ 875.00	\$ 875.00
	Expenses – air fare, hotel, meals \$2,57.28 ÷ 3	\$ 719.09	\$ 719.09	\$ 719.09
TOTALS		\$3,135.76	\$6,260.76	\$6,260.76

**JOHN M. JANZEN, Ed.D., CRC**7761 West Riverside Drive, Suite 120  
Boise, ID 83714

Phone # 208-344-4285

**INVOICE****BILL TO:**Parsons, Behle & Latimer  
John N. Zarian  
800 W. Main Street, Suite 1300  
Boise, ID 83702

DATE	INVOICE #
10/7/2014	13143

**CLIENT NAME*****American Semiconductor, Inc. v.  
David Roberts, Gyle Yearsley and  
William Tiffany***

DATE	DESCRIPTION	TIME	AMOUNT
10/7/2014	Deposition on Robert Yearsley, David Roberts and William Tiffany	3.2	1,200.00
	TOTAL: DR. JOHN M. JANZEN DEPOSITION FEE @ \$375.00/hr.		1,200.00
<b>Invoice is due and payable upon receipt</b>		<b>Balance Due</b>	<b>\$1200.00</b>

**Tax ID: 82-0422340**



# COLES REINSTEIN

Accounting & Consulting

960 Broadway Avenue, Suite 415  
Boise, ID 83706  
Phone (208) 345-2350  
Fax (208) 344-3019

Cooper & Larsen - Sage Silicon  
c/o Gary L. Cooper, Esq.  
P.O. Box 4229  
Pocatello, ID 83205-4229

Date: 8/31/2014  
Invoice Number: 12113  
Client: 61296.007

Moffatt Thomas - Zilog  
Gerald T. Husch, Esq.  
P.O. Box 829  
Boise, ID 83701-0829

---

Assist with disputed matter as detailed below:

<u>Date</u>	<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
7/31/2014	Dennis Reinstein Review pleadings and related documents. Conference with Gary Cooper about case issues.	3.80	\$330.00	\$1,254.00
8/15/2014	Dennis Reinstein Conference with Gary Cooper & Jerry Husch about Plaintiff's experts reports.	0.40	\$330.00	\$132.00
8/18/2014	Dennis Reinstein Go through reports of Richard Hoffman and Steve Holland. Prepare for meeting at Moffatt Thomas.	6.20	\$330.00	\$2,046.00
8/20/2014	Dennis Reinstein Review additional documents provided by Moffatt Thomas in preparation for meeting with Gary Cooper and Gerry Husch.	1.30	\$330.00	\$429.00
8/20/2014	Dennis Reinstein Meet at Moffatt Thomas to discuss claims against Sage & Zilog.	3.80	\$330.00	\$1,254.00
8/23/2014	Dennis Reinstein Review documents and begin outline of rebuttal report.	1.50	\$330.00	\$495.00
8/25/2014	Dennis Reinstein Review depositions of Douglas Hackler & Charles Darrough to aid in preparing questions for upcoming deposition of Lorelli Hackler.	3.70	\$330.00	\$1,221.00

Accounts are due upon receipt. 1.5% carrying charge is added to accounts outstanding 30 days or more.

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Client: Cooper & Larsen - Sage  
Silicon

Page: 2

8/27/2014	Dennis Reinstein	1.70	\$330.00	\$561.00
	Review additional data provided by ASI and develop additional questions for deposition of Lorelli Hackler.			
8/29/2014	Dennis Reinstein	0.60	\$330.00	<u>\$198.00</u>
	Conference with Gary Cooper about deposition of Lorelli Hackler and additional documentation received.			

Invoice Total: \$7,590.00

001744

# COLES REINSTEIN

Accounting & Consulting

960 Broadway Avenue, Suite 415  
Boise, ID 83706  
Phone (208) 345-2350  
Fax (208) 344-3019

12-119  
RECEIVED  
OCT 06 2014

Cooper & Larsen - Sage Silicon  
c/o Gary L. Cooper, Esq.  
P.O. Box 4229  
Pocatello, ID 83205-4229

Date: 9/30/2014  
Invoice Number: 12168  
Client: 61296.007

Moffatt Thomas - Zilog  
c/o Gerald T. Husch, Esq.  
P.O. Box 829  
Boise, ID 83701-0829

Assist with disputed matter as detailed below:

<u>Date</u>	<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
9/1/2014	Dennis Reinstein Review files and work on report.	5.70	\$330.00	\$1,881.00
9/2/2014	Bridger Hill Enter data to recreate schedules prepared by Richard Hoffman to facilitate analysis of his loss calculations.	3.50	\$125.00	\$437.50
9/2/2014	Dennis Reinstein Review files and work on report.	10.00	\$330.00	\$3,300.00
9/3/2014	Dennis Reinstein Review files and work on report. Follow up with various attorneys.	7.80	\$330.00	<u>\$2,574.00</u>

Invoice Total: \$8,192.50

## Statement of Open Accounts Receivable

<u>Invoice</u>	<u>Date</u>	<u>Description</u>	<u>Charge</u>	<u>Credit</u>	<u>Balance</u>
		Balance forward as of 9/2/2014			\$7,590.00
12168	9/30/2014	Invoice	\$8,192.50		\$15,782.50
Current Amount Due					\$15,782.50

Accounts are due upon receipt. 1.5% carrying charge is added to accounts outstanding 30 days or more.

001745



# COLES REINSTEIN

Accounting & Consulting

960 Broadway Avenue, Suite 415  
Boise, ID 83706  
Phone (208) 345-2350  
Fax (208) 344-3019

Cooper & Larsen - Sage Silicon  
c/o Gary L. Cooper, Esq.  
P.O. Box 4229  
Pocatello, ID 83205-4229

Date: 10/31/2014  
Invoice Number: 12267  
Client: 61296.007

Moffatt Thomas - Zilog  
c/o Gerald T. Husch, Esq.  
P.O. Box 829  
Boise, ID 83701-0829

Assist with disputed matter as detailed below:

<u>Date</u>	<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
10/1/2014	Dennis Reinstein Review files related to Hoffman's report. Conference with attorneys about his deposition.	2.80	\$330.00	\$924.00
10/13/2014	Dennis Reinstein Go through rebuttal reports provided. Work on questions for deposition of Richard Hoffman.	2.40	\$330.00	\$792.00
10/14/2014	Dennis Reinstein Go through expense schedule developed by Hoffman. Work on questions for deposition of Richard Hoffman.	3.10	\$330.00	\$1,023.00
10/21/2014	Dennis Reinstein Review additional documents provided by Moffatt Thomas.	0.80	\$330.00	\$264.00
10/30/2014	Dennis Reinstein Review files and questions for deposition of Richard Hoffman. Attend deposition. Follow up matters with Gerry Husch.	5.30	\$330.00	<u>\$1,749.00</u>

Total Professional Services:	\$4,752.00
Invoice Total:	<u>\$4,752.00</u>
Sage Silicon Invoice Total:	<u>\$2,376.00</u>
Zilog Invoice Total:	<u>\$2,376.00</u>

Accounts are due upon receipt. 1.5% carrying charge is added to accounts outstanding 30 days or more.

001746

# COLES REINSTEIN

Accounting & Consulting

960 Broadway Avenue, Suite 415  
Boise, ID 83706  
Phone (208) 345-2350  
Fax (208) 344-3019

12-119  
RECEIVED  
DEC 10 2014

Cooper & Larsen - Sage Silicon  
c/o Gary L. Cooper, Esq.  
P.O. Box 4229  
Pocatello, ID 83205-4229

Date: 11/30/2014  
Invoice Number: 12309  
Client: 61296.007

Moffatt Thomas - Zilog  
Gerald T. Husch, Esq.  
P.O. Box 829  
Boise, ID 83701-0829

Assist with disputed matter as detailed below:

<u>Date</u>	<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
11/2/2014	Dennis Reinstein Review documents and deposition transcripts provided by Moffatt Thomas.	1.50	\$330.00	\$495.00
11/3/2014	Dennis Reinstein Various conferences with Gary Cooper, Gerry Husch and Monte Dairymple about Zilog & ASI tools.	1.80	\$330.00	\$594.00
11/3/2014	Dennis Reinstein Review Exhibits to deposition of Hoffman.	0.80	\$330.00	\$264.00
11/4/2014	Dennis Reinstein Various conferences with Gary Cooper, Gerry Husch and David Staab about Zilog & ASI tools.	1.60	\$330.00	\$528.00
11/4/2014	Dennis Reinstein Review additional documents produced by ASI.	0.60	\$330.00	\$198.00
11/4/2014	Dennis Reinstein Review files in preparation for deposition.	3.40	\$330.00	\$1,122.00
11/5/2014	Dennis Reinstein Prepare for deposition - Meet with Gary Cooper & Gerry Husch.	3.50	\$330.00	\$1,155.00
11/5/2014	Dennis Reinstein Deposition by John Zarian	4.40	\$330.00	\$1,452.00
11/5/2014	Dennis Reinstein Follow up meeting with Gary Cooper and Gerry Husch.	0.60	\$330.00	\$198.00

Accounts are due upon receipt. 1.5% carrying charge is added to accounts outstanding 30 days or more.

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11/6/2014	Dennis Reinstein	2.20	\$330.00	\$726.00
	Work on analysis and recreation of Hoffman's schedule			
11/6/2014	Keith Pinkerton	3.10	\$330.00	\$1,023.00
	Review financial information produced; analyze information regarding variable costs; review literature on incremental costs.			
11/11/2014	Dennis Reinstein	2.60	\$330.00	\$858.00
	Reconstruct Hoffman cost worksheets and analyze variable and other costs utilized in his loss analysis.			
11/12/2014	Karen Ginnett	1.50	\$200.00	\$300.00
	Recreate Hoffman's Schedule 8.			
11/12/2014	Dennis Reinstein	0.30	\$330.00	\$99.00
	Work with staff on reconstructing Hoffman's schedule.			
11/13/2014	Dennis Reinstein	0.80	\$330.00	\$264.00
	Review files on Hoffman schedules reconstructed.			
11/16/2014	Dennis Reinstein	2.70	\$330.00	\$891.00
	Update analysis on Hoffman loss.			
11/18/2014	Dennis Reinstein	2.20	\$330.00	\$726.00
	Update analysis on Hoffman loss. Review details of his expense allocation calculations.			
11/18/2014	Dennis Reinstein	3.30	\$330.00	\$1,089.00
	Work on update to my original rebuttal report of Hoffman.			
11/19/2014	Dennis Reinstein	4.10	\$330.00	\$1,353.00
	Work on update to my original rebuttal report of Hoffman.			
11/21/2014	Dennis Reinstein	0.90	\$330.00	\$297.00
	Conference with Gary Cooper and Gerry Husch about supplemental report.			
11/22/2014	Dennis Reinstein	2.20	\$330.00	\$726.00
	Make updates to supplemental report and send revisions to Gary Cooper and Gerry Husch.			
11/24/2014	Dennis Reinstein	1.10	\$330.00	\$363.00
	Conference with Gary Cooper and Gerry Husch. Regarding content of supplemental report. Make updates.			
11/25/2014	Dennis Reinstein	0.80	\$330.00	\$264.00
	Review Declaration of Staab, finalize supplemental expert report and transmit to Cooper Larsen & Moffatt Thomas.			
11/26/2014	Dennis Reinstein	4.10	\$330.00	<u>\$1,353.00</u>
	Send preliminary analysis on delay damages to Gary Cooper & work on supplemental rebuttal report.			

Invoice Total: \$16,338.00

Client: Cooper & Larsen - Sage  
Silicon

Page: 3

**Statement of Open Accounts Receivable**

<u>Invoice</u>	<u>Date</u>	<u>Description</u>	<u>Charge</u>	<u>Credit</u>	<u>Balance</u>
		Balance forward as of 11/8/2014			\$20,534.50
	11/24/2014	Payment		\$7,891.25	\$12,643.25
12309	11/30/2014	Invoice	\$16,338.00		\$28,981.25
		Current Amount Due			<u>\$28,981.25</u>

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# COLES REINSTEIN

Accounting & Consulting

960 Broadway Avenue, Suite 415  
Boise, ID 83706  
Phone (208) 345-2350  
Fax (208) 344-3019

12-119  
RECEIVED  
JAN 08 2015

Cooper & Larsen - Sage Silicon  
c/o Gary L. Cooper, Esq.  
P.O. Box 4229  
Pocatello, ID 83205-4229

Date: 12/31/2014  
Invoice Number: 12326  
Client: 61296.007

Moffatt Thomas - Zilog  
c/o Gerlad T. Husch, Esq.  
P.O. Box 829  
Boise, ID 83701-0829

Assist with disputed matter as detailed below:

<u>Date</u>	<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
12/1/2014	Dennis Reinstein Work on reply to Plaintiff's motion in limine to exclude my supplemental report.	5.60	\$330.00	\$1,848.00
12/2/2014	Dennis Reinstein Work on reply to Plaintiff's motion in limine to exclude my supplemental report. Follow up with Gerry Husch.	2.80	\$330.00	\$924.00
12/3/2014	Dennis Reinstein Work on reply to Plaintiff's motion in limine to exclude my supplemental report. Follow up with Gerry Husch & Andrea Rosholt.	3.80	\$330.00	\$1,254.00
12/7/2014	Dennis Reinstein Work on data for Defendant's to consider in Court Hearing for Motion in Limine.	2.00	\$330.00	\$660.00
12/8/2014	Dennis Reinstein Review deposition transcript and work on data for Defendant's to consider in Court Hearing for Motion in Limine. Call with Andrea Rosholt.	3.40	\$330.00	\$1,122.00
12/15/2014	Dennis Reinstein Review files in preparation for deposition on supplemental report. Phone conference with Husch & Cooper.	2.80	\$330.00	\$924.00
12/15/2014	Dennis Reinstein Review my deposition and additional data provided by Moffatt Thomas.	1.50	\$330.00	\$495.00

Accounts are due upon receipt. 1.5% carrying charge is added to accounts outstanding 30 days or more.

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Client: Cooper & Larsen - Sage  
Silicon

Page: 2

12/16/2014	Dennis Reinstein	1.50	\$330.00	\$495.00
	Review my deposition and additional data provided by Moffatt Thomas in preparation for new deposition.			
12/16/2014	Dennis Reinstein	2.50	\$330.00	\$825.00
	Meet at Moffatt Thomas and attend deposition by John Zarian.			
12/21/2014	Dennis Reinstein	2.60	\$330.00	\$858.00
	Review transcript of second deposition and make notes for possible trial testimony.			
12/22/2014	Dennis Reinstein	0.30	\$330.00	\$99.00
	Complete notes on deposition transcript and send observations to Gary Cooper & Gerry Husch.			
12/23/2014	Dennis Reinstein	2.30	\$330.00	<u>\$759.00</u>
	Review latest version of reports from Holland and Hoffman. Send some preliminary observations to Gerry Husch.			

Invoice Total: \$10,263.00

001751

# COLES REINSTEIN

Accounting & Consulting

960 Broadway Avenue, Suite 415  
Boise, ID 83706  
Phone (208) 345-2350  
Fax (208) 344-3019

Cooper & Larsen - Sage Silicon  
c/o Gary L. Cooper, Esq.  
P.O. Box 4229  
Pocatello, ID 83205-4229

Date: 01/31/15  
Invoice Number: 12358  
Client: 61296.007

Assist with disputed matter as detailed below:

<u>Date</u>	<u>Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
01/03/15	Dennis Reinstein Review files and respond to questions about time periods used in loss analysis developed by Hoffman.	1.20	\$330.00	\$396.00
01/07/15	Dennis Reinstein Review deposition testimony and documents of Hoffman & outline questions for his trial testimony.	4.50	\$330.00	\$1,485.00
01/08/15	Dennis Reinstein Go through schedules in Hoffman's sur-rebuttal report issued 12/24/14.	3.30	\$330.00	\$1,089.00
01/09/15	Dennis Reinstein Develop explanation summaries on Hoffman's schedules and send to Cooper & Husch.	2.60	\$330.00	\$858.00
01/10/15	Dennis Reinstein Organize and prepare for trial testimony.	2.30	\$330.00	\$759.00
01/10/15	Dennis Reinstein Work on direct testimony outline.	1.10	\$330.00	\$363.00
01/12/15	Dennis Reinstein Attend trial testimony given by Rick Hoffman & present rebuttal testimony.	4.50	\$330.00	<u>\$1,485.00</u>
01/27/15	Dennis Reinstein Parking			<u>\$4.00</u>

Invoice Total: \$6,439.00

Accounts are due upon receipt. 1.5% carrying charge is added to accounts outstanding 30 days or more.

001752

American Semiconductor, Inc. vs. Sage Silicon Solutions, Zilog, et al.

Cooper & Larsen - Sage Silicon  
c/o Gary L. Cooper, Esq.  
P.O. Box 4229  
Pocatello, ID 83205-4229

Moffatt Thomas - Zilog  
c/o Gerald T. Husch, Esq.  
P.O. Box 829  
Boise, ID 83701-0829

Date	Description	Amount Billed	Cooper & Larsen - Sage Silicon				Moffatt Thomas - Zilog			
			Due	Paid	Balance		Due	Paid	Balance	
8/31/14	Invoice	7,590.00	3,795.00	2,048.13	1,746.87	Ck 12/15	3,795.00	3,795.00	0.00	Ck 11/24
9/30/14	Invoice	8,192.50	4,096.25	4,084.50	1,758.62	Ck 1/5	4,096.25	4,096.25	0.00	Ck 11/24
10/31/14	Invoice	4,752.00	2,376.00	4,084.50	50.12	Ck 1/9	2,376.00		2,376.00	
11/30/14	Invoice	16,338.00	8,169.00	2,565.75	5,653.37	Ck 1/23	8,169.00		10,545.00	
12/30/14	Invoice	10,263.00	5,131.50		10,784.87		5,131.50		15,676.50	
1/27/14	Invoice	6,439.00	3,219.50		14,004.37		3,219.50		18,896.00	



# COLES REINSTEIN

Accounting & Consulting

Dennis R. Reinstein, CPA/ABV, ASA, CVA  
S. Jason Coles, MBA, CPA, PFS  
Keith A. Pinkerton, MBA, CFA, ASA  
Karen A. Ginnett, CPA, CFE, MST

Parsons Behle & Latimer  
c/o John N. Zarian, Esq.  
800 West Main Street, Suite 1300  
Boise, ID 83702

**Invoice Date:** December 17, 2014

**Client Number:** 61296.007

---

*For professional services rendered for the period ending December 17, 2014*

Cooper & Larsen - ASI v. Sage Silicon Solutions

Deposition by John Zarian taken December 16, 2014  
Dennis Reinstein 2.0 hours @\$330 per hour

\$ 660.00

**Total Invoice Amount** 660.00

**Beginning Balance**

Current Activity:  
Balance forward 1,452.00  
Billings 660.00

**Net Due** \$ 2,112.00

# COLES REINSTEIN

Accounting & Consulting

Dennis R. Reinstein, CPA/ABV, ASA, CVA  
S. Jason Coles, MBA, CPA, PFS  
Keith A. Pinkerton, MBA, CFA, ASA  
Karen A. Ginnett, CPA, CFE, MST

Parsons Behle & Latimer  
c/o John N. Zarian, Esq.  
800 West Main Street, Suite 1300  
Boise, ID 83702

**Invoice Date:** November 5, 2014

**Client Number:** 61296.007

---

*For professional services rendered for the period ending November 30, 2014*

Cooper & Larsen - ASI v. Sage Silicon Solutions

Deposition by John Zarian

Dennis Reinstein 4.4 hours @\$330 per hour

\$ 1,452.00

**Total Invoice Amount** 1,452.00

**Beginning Balance**

Current Activity:

Apply Retainer

Billings 1,452.00

**Net Due** \$ 1,452.00

*Member of American Institute of Certified Public Accountants and Idaho Society of Certified Public Accountants*

University Plaza, 960 Broadway Ave., Suite 415, Boise, ID 83706 tel 208.345.2350 fax 208.344.3019 [www.colesreinstein.com](http://www.colesreinstein.com)

001755



Susan M. Wolf  
Court Reporter to Hon. Thomas F. Neville  
200 West Front Street  
Boise, ID 83702  
(208) 287-7690 \* (623) 570-2127

## ESTIMATE / INVOICE

---

TO: Mr. Craig Connell  
COOPER & LARSON, CHTD  
151 North 3rd Avenue  
Second Floor  
Pocatello, ID 83201

INV. NO. SW14-100

INV DATE: 11-18-14

TAX ID: 26-230714

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DUE UPON RECIEPT

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AMERICAN SEMICONDUCTOR, INC. vs. SAGE SILICON and ZILOG,  
Ada County Case No. CVOC-2011-0023344

Transcript of Motion Hearing/Pretrial Conference held Friday, November 14, 2014  
before the Hon. Thomas F. Neville, District Court Judge.

Original (One week rate)	175 pgs @ 7.00	\$ 1,225.00
Copy	175 pgs @ 3.25	568.75
<b>TOTAL COST:</b>		<b>1,973.75</b>

(To be split between Cooper & Larsen and Moffatt Thomas)

**DEPOSIT DUE** \$ 896.88

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Idaho, 83702.

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SAGE PAID \$ 986.87

001757

Susan M. Wolf  
Court Reporter to Hon. Thomas F. Neville  
200 West Front Street  
Boise, ID 83702  
(208) 287-7690 \* (623) 570-2127

## INVOICE

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TO: COOPER & LARSON, CHTD	INV. NO. SW15-004
Attn: Mr. Gary Cooper / Mr. J.D. Oborn	
151 North 3rd Avenue	INV DATE: 01-11-15
Second Floor	
Pocatello, ID 83201	TAX ID: 26-230714

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DUE UPON RECIEPT

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AMERICAN SEMICONDUCTOR, INC. vs. SAGE SILICON and ZILOG,  
Ada County Case No. CVOC-2011-0023344

Transcript of Testimony from Jury Trial, Day 6, Saturday, 01/10/15,  
before the Hon. Thomas F. Neville, District Court Judge.

Testimony of David Roberts, (copy)	161pgs @ 3.65	\$ 551.15
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<b>TOTAL COST:</b>	<b>\$ 551.15</b>
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Please make check payable to Sue Wolf, and mail or deliver to Ada County  
Courthouse, TCA Office, 4<sup>th</sup> Floor, 200 West Front Street, Boise, Idaho, 83702.

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## INVOICE

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DUE UPON RECIEPT

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AMERICAN SEMICONDUCTOR, INC. vs. SAGE SILICON and ZILOG,  
Ada County Case No. CVOC-2011-0023344

Transcript of Testimony from Jury Trial, Day 6, Saturday, 01/10/15,  
before the Hon. Thomas F. Neville, District Court Judge.

Testimony of Gyle Yearsley, (copy) 35 pgs @ 3.65 \$ 127.75

**TOTAL COST: \$ 127.75**

**Please make check payable to Sue Wolf, and mail or deliver to Ada County  
Courthouse, TCA Office, 4<sup>th</sup> Floor, 200 West Front Street, Boise, Idaho, 83702.**

**ORIGINAL**

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001759



Gary L. Cooper - Idaho State Bar #1814  
COOPER & LARSEN, CHARTERED  
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Gyle Yearsley, William Tiffany and Evelyn Perryman*

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Email: [dbower@stm-law.com](mailto:dbower@stm-law.com)

*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**SAGE DEFENDANTS' OFFER OF  
JUDGMENT**

RELATED COUNTER ACTIONS



COMES NOW the Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany, and pursuant to Rule 68 of the Idaho Rules of Civil Procedure, offer to allow Plaintiff to take judgment against them in the sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000).

This total offer of judgment for ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000) must be accepted in its entirety and is not divisible, and includes all claims recoverable against the above named Defendants by Plaintiff, including any attorney's fees and costs.

This offer must be accepted within fourteen (14) days after service, as required by Rule 68, and thereafter is deemed withdrawn if not accepted. The undersigned represents that he has authority to sign this offer of judgment on behalf of said Defendants.

DATED this 12<sup>th</sup> day of December, 2014.

COOPER & LARSEN



---

GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> Dec day of ~~August~~, 2014, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702

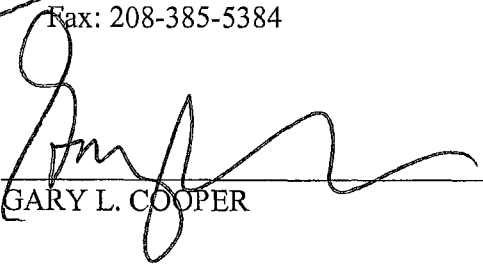
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Gerald T. Husch  
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\_\_\_\_\_  
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*Counsel for Counterclaimants*

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 237

FEB 04 2015

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**SAGE DEFENDANTS MEMORANDUM  
IN SUPPORT OF AN AWARD OF  
COSTS AND ATTORNEY FEES**

RELATED COUNTER ACTIONS

## INTRODUCTION

COME NOW the Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany, by and through their attorneys of record, and request that this Court award them costs as the prevailing parties pursuant to IRCP 54(d)<sup>1</sup>. The Defendants Roberts, Yearsley and Tiffany request that this Court award them costs and attorney fees pursuant to the terms of their individual Employee Confidentiality Agreements with American Semiconductor, Inc. ("ASI") and/or as the prevailing parties pursuant to IRCP 54(d), I.C. § 12-120(3) and IRCP 54(e). This request is based on the Special Verdict filed on January 16, 2015 and the Judgment filed January 21, 2015.

Reasonable attorney fees in the minimum amount of \$207,713<sup>2</sup> should be awarded. The attorney fees requested in this action are supported by the Affidavit of Gary L. Cooper in Support of Costs and Attorney Fees. In addition, costs should be awarded pursuant to IRCP 54(d) in the minimum<sup>3</sup> amount of \$20,994.93. The total minimum amount of costs and fees requested by Roberts, Yearsley and Tiffany are \$228,707.93.

To the best of the knowledge and belief of Roberts, Yearsley and Tiffany, the following costs are correct and were incurred to defend against the claims by ASI that the individuals breached their ECA. Those costs which can be awarded as a matter of right pursuant to IRCP 54(d)(1) are

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<sup>1</sup> Attorney fees for Sage Silicon Solutions, LLC are not requested because there is no contract or statute which would provide a basis for attorney fees. IRCP 54(e)(1). *Syringa Networks, LLC v. Idaho Dept. of Admin.*, 155 Idaho 55, 66, 305 P.3d 499, 510 (2013), reh'g denied (Aug. 29, 2013) (the tort of tortious interference with prospective economic advantage does not arise from a commercial transaction) Sage Silicon Solutions, LLC, however, seeks attorney fees as a part of its joinder with Zilog's Motion for Sanctions against ASI in connection with the unsupported claim that it was liable for misappropriation of trade secrets from ASI.

<sup>2</sup> Reasonable attorney fees would exceed the minimum amount. At \$250/hour for Gary L. Cooper a reasonable attorney fee would amount to \$297,825.50.

<sup>3</sup> If costs are awarded pursuant to the terms of the contract instead of IRCP 54(d)(1), this Court could award the total costs incurred by Roberts, Yearsley and Tiffany to defend against the contract claims of ASI which would not be subject to the limitations contained in IRCP 54(d)(1)(C). That total is \$75,965.70.

**highlighted:**

Description of Cost	Amount
Filing Fee - 4/2/14	\$66.00
Deposition of David Staab, 30(b)(6) - 3/4/14	\$510.28
Deposition of Gyle Yearsley, 30(b)(6) - 2/11/14	\$189.12
Deposition of William Tiffany, 30(b)(6) - 2/12/14	\$174.42
Deposition of Sonia Daley - 3/12/14	\$122.26
Deposition of Alan Shaw - 3/12/14	\$146.44
Deposition of Sean Beck - 3/12/14	\$137.22
Deposition of Richard Chaney - 6/25/14	\$1,092.76
Deposition of Dale Wilson - 6/26/14	\$1,107.14
Deposition of Doug Hackler - 6/27/14	\$1,171.50
Deposition of David Roberts, 30(b)(6) - 2/11/14	\$621.85
Deposition of David Roberts - 6/19/14	\$599.01
Deposition of Charles S. Darrough, 30(b)(6) - 2/12/14	\$192.37
Deposition of Gyle Yearsley - 6/18/14	\$738.13
Deposition of William Tiffany - 6/20/14	\$363.95
Deposition of Evelyn Perryman - 5/5/14	\$216.24
Deposition of Russell Lloyd - 5/5/14	\$307.82
Deposition of Lloyd Huynh, 30(b)(6) - 2/12/14	\$102.25
Deposition of David Staab, 30(b)(6) - 6/9/14	\$522.16
Deposition of David Staab, 30(b)(6) - 3/4/14	\$524.13
Deposition of David Staab, 30(b)(6) - 2/12/14	\$184.34
Deposition of Richard T. White - 9/2/14	\$352.03
Deposition of Lorelli Hackler - 8/27/14	\$678.50
Deposition of Doug Hackler - 10/15/14	\$35.78

Deposition of Monte Dalrymple - 10/8/14	\$375.40
Deposition of Charles Donohoe - 10/8/14	\$334.38
Deposition of John Janzen - 10/7/14	\$335.49
Deposition of Dennis Reinstein - 11/5/14	\$412.13
Deposition of Stephen Holland - 10/30/14	\$639.67
Deposition of Richard Hoffman - 10/30/14	\$509.09
Deposition of Dennis Reinstein - 12/16/14	\$305.55
Deposition of David Staab, 30(b)(6) - 12/19/14	\$403.54
Deposition of Gyle Yearsley - 12/19/14	\$217.04
Deposition of William Tiffany - 12/19/14	\$230.82
Deposition of David Roberts - 12/19/14	\$296.11
Deposition of Doug Hackler, 30(b)(6) - 10/15/14	\$279.51
Mediator Fee - Ron Schilling	\$933.00
Expert Fee for Deposition - Monte Dalrymple*	\$367.50
Expert Fees for Services Rendered - Monte Dalrymple	\$8,397.73
Expert Fee for Deposition - Charles Donohoe*	\$3,135.76 (\$2,000)
Expert Fees for Services Rendered - Charles Donohoe	\$18,010.76
Expert Fee for Deposition - John M. Janzen*	\$1,200.00
Expert Fee for Deposition - Dennis Reinstein*	\$2,112 (\$2,000)
Expert Fees for Services Rendered - Dennis Reinstein	\$25,648.75
Transcript of Hearing on November 14, 2014	\$986.87
Transcript of Trial Testimony of David Roberts	\$551.15
Transcript of Trial Testimony of Gyle Yearsley	\$127.75
Total Reasonable Costs	\$75,965.70
Total Costs Pursuant to IRCP 54	\$20,994.93

\*ASI agreed to pay travel expenses up to \$2,000 and the full cost of taking the deposition of the experts retained by the Sage Defendants and Zilog. As of the date this memorandum was drafted,

these expenses had not been paid and are recoverable as a matter of right up to \$2,000 based on IRCP 54.

**ROBERTS, YEARSLEY AND TIFFANY ARE ENTITLED TO RECOVER COSTS AND ATTORNEY FEES IN THIS MATTER PURSUANT TO CONTRACT (THE EMPLOYEE CONFIDENTIALITY AGREEMENT) OR PURSUANT TO STATUTE AND RULE**

It is clear in Idaho that “[a]ttorney fees may be awarded if authorized by **statute** or **contract**.” *Hellar v. Cenarrusa*, 106 Idaho 571, 578, 682 P.2d 524, 531 (1984) (emphasis added).

Roberts, Yearsley and Tiffany each signed an Employee Confidentiality Agreement (“ECA”) when they became employees of ASI. Each ECA contains an identical paragraph 13 that provides in relevant part:

**13. Miscellaneous.** This Agreement will be governed by the local laws of the State of Idaho. The parties hereby consent to the jurisdiction of the state and federal courts sitting in Ada County, Idaho for all matters and actions arising under this agreement. The prevailing party shall be entitled to reasonable attorneys’ fees and costs incurred in connection with such litigation.

Trial Exhibits 4, 13 and 14. Thus, the ECA provides that a party that prevails on any action arising under the terms of the ECA is entitled to recover reasonable attorney fees and costs that are incurred in connection with that action. The recoverable attorney fees and costs are not limited by the provisions of IRCP (d) and (e). *Zenner v. Holcomb*, 147 Idaho 444, 210 P.3d 552 (2009)

Roberts, Yearsley and Tiffany are also entitled to recover attorney fees as the prevailing party under I.C. § 12-120(3) because “[a]ctions brought for breach of an employment contract are considered commercial transactions, subject to the attorney fee provisions of I.C. § 12-120(3).” *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 415, 179 P.3d 1064, 1071 (2008). The gravamen

of ASI's case against Roberts, Yearsley and Tiffany was the breach of the ECA. Prevailing parties are also entitled to costs as a matter of right pursuant to IRCP 54(d)(1).

### **ROBERTS, YEARSLEY AND TIFFANY PREVAILED ON THE CLAIM FOR BREACH OF CONTRACT**

To prevail on an action for breach of contract a plaintiff must establish the following four elements: (1) the existence of a contract, (2) a breach of that contract, (3) the breach caused damages, and (4) the amount of the damages. *Mosell Equities, LLC v. Berryhill & Co.*, 154 Idaho 269, 278, 297 P.3d 232, 241 (2013). In the present matter, Roberts, Yearsley and Tiffany prevailed on the breach of contract claim. ASI initially alleged that paragraphs 2 (Trade Secrets and Confidential Information), 4 (Assignment of Inventions) and 7 (Duty Not to Compete) had been breached. Before trial, ASI dismissed its Trade Secret misappropriation claim. During arguments on the Sage Defendants' motion for directed verdict, ASI withdrew any remaining claim for breach of paragraph 2 and also withdrew its claim for breach of paragraph 4. ASI then attempted to amend its Second Amended Complaint to assert a claim for breach of paragraph 3 (Disclosure of Inventions). The Court denied the impromptu motion to amend because the Second Amended Complaint did not contain a claim for breach of paragraph 3 and the issue had not been tried by consent of the parties. The only breach of contract claim that was presented to the jury was the claim for breach of paragraph 7. The jury found that Roberts, Yearsley and Tiffany did breach that paragraph of the ECA but awarded no damages as a result of the breach. Thus, ASI did not establish elements three (breach caused damages) and four (amount of damages) of a breach of contract claim and did not prevail.<sup>4</sup>

The Idaho Supreme Court has consistently held that a trial court cannot grant a judgment on

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<sup>4</sup> The same arguments apply to the claim for breach of fiduciary duty because no damages were awarded for that breach.



only one element of a claim. In *Mosell Equities, LLC*, 154 Idaho at 274, 297 P.3d at 237, the trial court granted a JNOV on Count I, determining that there was an express contract. The Supreme Court determined that the district court erred because the JNOV was only granted on the first element of a breach of contract claim; the existence of a contract. The JNOV did not determine that there was a breach, that the breach caused damages, or the amount of the damages. The Supreme Court stated that judgment can only be entered if it "resolves an entire cause of action." In this case, the jury determined that there were no damages associated with the breach of contract. A judgment cannot be entered in favor of ASI on only the elements of existence of a contract and breach because this ignores the requirement that to be actionable a breach must cause damage. Therefore, ASI cannot be the prevailing party on the breach of contract claim because it did not carry its burden on all elements of the claim. Roberts, Yearsley and Tiffany are the prevailing parties.

**ROBERTS, YEARSLEY AND TIFFANY CAN RECOVER ALL ATTORNEY FEES AND COSTS INCURRED TO DEFEND AGAINST THE BREACH OF CONTRACT CLAIMS**

Idaho recognizes that parties to a contract may provide for the award of attorney fees and costs in litigation arising from the contract and enforces these provisions without resort to the rules applicable to award of attorney fees governed by the Idaho Rules of Civil Procedure. In *Zenner v. Holcomb*, 147 Idaho 444, 446, 210 P.3d 552, 554 (2009) the contract between the parties contained a provision which provided in relevant part: "the prevailing party shall be entitled to have it's [sic] attorney's fees and costs paid by the other party." The Idaho Supreme Court held:

In *Holmes v. Holmes*, 125 Idaho 784, 874 P.2d 595 (Ct.App.1994), the Idaho Court of Appeals stated: "Contractual terms providing for recovery of attorney fees incurred in actions to enforce the contract represent an election by the parties to place the risk of litigation costs on the one who is ultimately unsuccessful. Such provisions are ordinarily to be honored by the courts." 125 Idaho at 787, 874 P.2d at 598. Because these provisions are generally honored in Idaho, we hold that the Zenners are the

prevailing party on appeal and, therefore, entitled to their *actual* costs and attorney fees on appeal pursuant to the contract

*Id.* at 452, 210 P.3d at 560 (emphasis added). *See also Farm Credit Bank of Spokane v. Wissel*, 122 Idaho 565, 568 - 69, 836 P.2d 511, 514 - 15 (1992) (where there is a valid contract between the parties which contains a provision for an award of attorney fees and costs, the terms of that contractual provision establish a right to an award of attorney fees and costs)

The provision in the ECA contract between Roberts, Yearsley and Tiffany and ASI provided that "[t]he prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such litigation." Because the contract provision uses "prevailing party" this Court should use the IRCP 54(d)(1)(B) criteria for determining whether Roberts, Yearsley and Tiffany were the prevailing parties. If they are the prevailing parties then actual attorney fees and costs incurred shall be awarded. *Zenner v. Holcomb*, 147 Idaho 444, 451, 210 P.3d 552, 559 (2009) (this Court has held that when a "contract provision limits the award of attorney fees to a 'prevailing party,' the I.R.C.P. 54(d)(1) definition of 'prevailing party' [is] applicable.)

**THE SAGE DEFENDANTS ARE THE PREVAILING PARTIES BECAUSE THEY  
PREVAILED ON THE KEY ISSUES IN THE CASE**

Pursuant to Rule 54(e)(1) of the Idaho Rules of Civil Procedure, a Court may award attorney fees based on determination of the prevailing parties as defined by Rule 54(d)(1)(B). That rule states:

In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

IRCP 54. Although the Court has broad discretion in determining who the prevailing party is, the Idaho Supreme Court has provided some guidance. The Supreme Court has stated:

In determining which party prevailed in an action where there are claims and counterclaims between opposing parties, the court determines who prevailed “in the action.” That is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis.

*Nguyen*, 146 Idaho at 194, 191 P.3d at 1114. When taking an overall view of the case, Roberts, Yearsley and Tiffany were the prevailing parties on all claims alleged in the Second Amended Complaint or raised by subsequent motion:

CLAIMS	PREVAILING PARTY
1. Breach of various provisions of the ECA	Sage Defendants
2. Breach of Fiduciary Duty	Sage Defendants
3. Breach of Implied Covenant of Good Faith and Fair Dealing	Sage Defendants
4. Tortious Interference with Prospective Economic Advantage	Sage Defendants
5. Tortious Interference with Contract	Sage Defendants
6. Violation of the Idaho Trade Secret Act	Sage Defendants
7. Appropriation of ASI's name	Sage Defendants
8. Unjust Enrichment	Sage Defendants
9. Consumer Protection Act Violation	Sage Defendants
10. Declaratory Relief	Sage Defendants
11. Injunctive Relief	Sage Defendants
12. Claim for punitive damages	Sage Defendants

Of the twelve claims alleged against the Sage Defendants only three were presented to the jury. The other claims were dismissed<sup>5</sup> or did not survive summary judgment and directed verdict

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<sup>5</sup> The Trade Secret Act claim was pursued by ASI until it failed to comply with an order from the Court requiring ASI to adequately disclose the trade secret it was claiming was used by the individuals. ASI then represented that it would dismiss the trade secret claim but waited an additional two weeks to do so. ASI's conduct regarding the trade secret claim is the subject of a motion for sanctions by Zilog, Inc. that was joined by the Sage

motions. ASI requested relief in the amount of \$1,025,087 on the remaining claims for breach of contract, breach of fiduciary duty, and tortious interference with a prospective economic advantage that were decided by the jury. ASI did not prevail on the breach of contract or breach of fiduciary duty as the jury awarded no damages for those claims. ASI was awarded \$195,175 for the tortious interference claim or 19% of what it was seeking in damages. The Sage Defendants served an Offer of Judgment in the amount of \$100,000 on December 12, 2014. ASI only prevailed on the counterclaims for unjust enrichment and tortious interference with economic advantage because no damages were awarded.

In *Chadderdon v. King*, 104 Idaho 406, 410-12, 659 P.2d 160, 164-66 (Ct. App. 1983), the Idaho Court of Appeals upheld an award of attorney fees to a contractor. The plaintiffs sued the contractor for breach of a construction agreement for unsatisfactory workmanship and building defects. The contractor counterclaimed for amounts he spent above the price stated in the construction agreement. The jury denied recovery to both parties. However, the trial court awarded attorney fees to the contractor. The trial court determined that both parties had prevailed in part but the contractor was the prevailing party on the “main issue in the case which consumed the majority of the trial” and was therefor entitled to recover attorney fees. *Id.* The Court of Appeals determined that the trial court did not abuse its discretion in determining that the contractor was the prevailing party. Additionally, the Court of Appeals awarded the contractor attorney fees on appeal because he prevailed and the construction agreement “mandates an award of attorney fees to the prevailing party.” *Id.*

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Defendants.

In the present case there were two key issues that consumed a majority of the trial. The first was whether there was a breach of contract. Roberts, Yearsley, and Tiffany prevailed on this issue. The second was whether design tools should be part of the damages calculation for the tortious interference claim. The tools accounted for more than \$800,000 of the \$1,025,087 that ASI claimed in lost profits. The jury's award of \$195,175 could not have included tool costs that ASI was claiming. The Sage Defendants prevailed on the appropriate calculation of damages.

This is consistent with the Idaho Supreme Court's decision in *Lickley v. Max Herbold, Inc.*, 133 Idaho 209, 213-14, 984 P.2d 697, 701-02 (1999). In *Lickley*, a dispute arose over a contract for potatoes. The primary issue in the case was whether the market price or the contract price for "rejectable potatoes" was the appropriate measure of relief under the contract. The plaintiff did not recover the full amount requested but was determined to be the prevailing party because he prevailed on the appropriate measure of damages which the Supreme Court determined was "the greatest issue in the case." *Id.* Besides the claim for breach of contract, whether ASI was entitled to recover tool costs was the greatest issue tried. The damages award of less than \$200,000 could not have included the more than \$800,000 in tool costs that ASI claimed it was entitled to recover.

As well, the Idaho Supreme Court in *Advanced Med. Diagnostics, LLC v. Imaging Ctr. of Idaho, LLC*, 154 Idaho 812, 815, 303 P.3d 171, 174 (2013) upheld an award of attorney fees to a defendant where the trial court determined that the defendant prevailed on the primary issue in the litigation. In that case, the defendant prevailed on the breach of contract claim because although the jury found the defendant breached the contract, it did not award the plaintiff any damages. *Id.* at 814, 303 P.3d at 173. The Supreme Court held:

The determination of prevailing party is not decided merely by counting the answers

on the special verdict form and holding that whoever received more answers in its favor is the prevailing party.

*Id.* at 815, 303 P.3d at 174. The trial court did not abuse its discretion in determining that the defendant was the prevailing party, even though he lost on his counterclaims, because the defendant prevailed on the breach of contract claim, which was the “primary issue in the litigation.” Roberts, Yearsley and Tiffany prevailed on the breach of contract claim and the Sage Defendants prevailed on the primary issue related to damages on the tortious interference with economic advantage claim. Thus, the Sage Defendants should be allowed to recover reasonable attorney fees.

The Sage Defendants served an offer of judgment on ASI in this matter on December 12, 2014. The offer of judgment was for \$100,000. ASI never filed any type of response to the offer. The jury verdict was for \$195,175, which was \$95,175 more than the offer of judgment. The verdict is only \$74,545 more than the \$120,630 that the Sage Defendants’ expert, Dennis Reinstein, calculated to be the appropriate measure of damages without tool costs of more than \$800,000. The verdict is also \$829,912 less than the \$1,025,087 that ASI claimed at trial it was entitled to receive. Given the disparate positions that the parties took on the measure of damages, the final judgment was substantially closer to the proof offered by the Sage Defendants than it was to the proof offered by ASI. The Sage Defendants prevailed on the proper measure of damages in this case and should be considered the prevailing party for purposes of attorney fees.

**AN AWARD OF REASONABLE ATTORNEY FEES UNDER IRCP 54 AND IDAHO  
CODE 12-120(3) IS NOT LIMITED TO ACTUAL FEES**

The determination of what constitutes reasonable attorney fees is within the sound discretion of the trial court. *Parsons v. Mut. Of Enumclaw Ins. Co.*, 143 Idaho 743, 747, 152 P.3d 614, 618 (2007). Before awarding attorney fees, the trial court must consider the factors set forth in IRCP

54(e)(3) but it may also consider other factors as deemed appropriate. The factors that must be considered are:

(3) *Amount of Attorney Fees.* In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

IRCP 54(e)(3). Reasonable attorney fees are not are not always capable of being determined by precise mathematical calculation and may be arbitrary to a degree. *Craft Wall of Idaho, Inc. v. Stonebraker*, 108 Idaho 704, 707, 701 P.2d 324, 327 (Ct. App. 1985). However, basing attorney fees on pure conjecture is not appropriate. *Johannsen v. Utterbeck*, 146 Idaho 423, 433, 196 P.3d 341, 351 (2008). There is nothing in IRCP 54 that limits the amount of the "reasonable attorney fees recovered to that actually incurred by the prevailing party by virtue of its contract with its attorney." *Decker v. Homeguard Sys., a Div. of Intermountain Gas Co.*, 105 Idaho 158, 162-63, 666 P.2d 1169, 1173-74 (Ct. App. 1983).

In *Decker*, the trial court awarded attorney fees to the prevailing party that exceeded the amount the attorney would have received from the clients. *Id.* The district court determined that it

was not limited to in awarding only the amounts actually incurred. *Id.* The non-prevailing party argued that the attorney fee award “should be limited to the minimum amount required to be paid under the attorney’s contract of employment. *Id.* The Court of Appeals upheld the award of attorney fees and determined that IRCP 54 is not limited to the amounts actually incurred and that the trial court properly considered all the factors under IRCP 54. The trial court did not abuse its discretion in awarding more attorney fees than the prevailing party was required to pay its attorney. *Id.*

### CONCLUSION

When the case is considered in its entirety, Sage Silicon Solutions, LLC, Roberts, Yearsley and Tiffany are the prevailing parties as against ASI. A majority of the claims asserted, including the trade secret claim which was the largest claim prior to trial, were all dismissed prior to trial. Roberts, Yearsley and Tiffany prevailed on the breach of contract claim because the jury determined that there were no damages associated with the breach of contract. Even when the tortious interference with economic advantage is considered, the answer is still the same. The key issue in that claim and in calculating damages was whether ASI was entitled to recover more than \$800,000 in tools costs. The award of \$195,175 by the jury on this claim could not have included the tool costs. Thus, Sage Silicon Solutions, LLC, Roberts, Yearsley and Tiffany prevailed on the primary issue related to damages and the claim for tortious interference with prospective economic advantage.

Roberts, Yearsley and Tiffany request that they be awarded actual attorney fees and costs pursuant to the terms of the ECA incurred in defending against the claims of ASI. If circumstances warrant, Roberts, Yearsley and Tiffany request “reasonable attorney fees” in excess of the actual attorney fees as prevailing parties pursuant to I. C. §12-120(3) and IRCP 54(e). Sage Silicon Solutions, LLC requests that it be awarded its reasonable costs as a matter of right incurred in

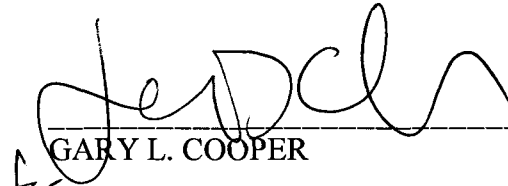
**SAGE DEFENDANTS’ SUPPORTING MEMO FOR COSTS AND ATTORNEY FEES - PAGE 14**



defending against the claims of ASI.

DATED this 3 day of February, 2015.

COOPER & LARSEN



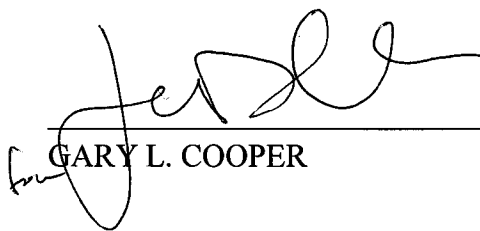
A handwritten signature in black ink, appearing to read "Gary L. Cooper", is written over a horizontal dashed line. The signature is stylized with large, flowing letters.

GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3 day of February, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian	<input checked="" type="checkbox"/> U.S. mail
Kennedy K. Luvai	<input type="checkbox"/> Express mail
Parsons Behle & Latimer	<input type="checkbox"/> Hand delivery
800 W Main Street, Suite 1300	<input checked="" type="checkbox"/> Electronic delivery: <a href="mailto:jzarian@parsonsbehle.com">jzarian@parsonsbehle.com</a>
Boise, ID 83702	<a href="mailto:kluvai@parsonsBehle.com">kluvai@parsonsBehle.com</a>
	<input type="checkbox"/> Fax: 208-562-4901
Chad Bernards	<input checked="" type="checkbox"/> U.S. mail
Stewart Taylor & Morris, PLLC	<input type="checkbox"/> Express mail
12550 W Explorer Drive, Suite 100	<input type="checkbox"/> Hand delivery
Boise, ID 83713	<input checked="" type="checkbox"/> Electronic delivery <a href="mailto:dbower@stm-law.com">dbower@stm-law.com</a>
	<input type="checkbox"/> Fax: 208-345-4461
Gerald T. Husch	<input checked="" type="checkbox"/> U.S. mail
Moffatt Thomas Barrett Rock & Fields	<input type="checkbox"/> Express mail
101 S. Capitol Blvd., 10 <sup>th</sup> Floor	<input type="checkbox"/> Hand delivery
P.O. Box 829	<input checked="" type="checkbox"/> Electronic delivery <a href="mailto:gth@moffatt.com">gth@moffatt.com</a>
Boise, ID 83701	<input type="checkbox"/> Fax: 208-385-5384

  
\_\_\_\_\_  
GARY L. COOPER

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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 4:55

FEB 04 2015

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDA  
DEPUTY

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**PLAINTIFF'S MOTION TO AMEND  
OR CLARIFY THE VERDICT, OR IN  
THE ALTERNATIVE, AMEND THE  
JUDGMENT**

**ORAL ARGUMENT REQUESTED**

**DATE:** February 19, 2015  
**TIME:** 1:30 p.m.

Pursuant to Idaho Rule of Civil Procedure 59(a), plaintiff and counterdefendant, American Semiconductor, Inc. ("ASI"), hereby submit the instant Motion to Clarify the Verdict, or in the Alternative, Amend the Judgment.

### **BACKGROUND**

On January 16, 2015, the jury in this case returned a special verdict form ("Special Verdict") which included, in relevant part, as follows:

1. David Roberts, Gyle Yearsley, and William Tiffany were each determined to have breached Paragraph 7 of the Employee Confidentiality Agreement.
2. David Roberts, Gyle Yearsley, and William Tiffany were each determined to have breached their respective duties of loyalty to ASI.
3. The foreman of the jury, Ms. Sharon Barlow, wrote "\$195,175" for the total amount of damages sustained by ASI that were caused by the aforementioned breaches. However, she then crossed that number out and wrote "0."
4. David Roberts, Gyle Yearsley, William Tiffany, and Sage Silicon Solutions, LLC were each determined to have intentionally interfered with ASI's economic expectancy of contracting with Zilog, Inc.

The jury found that ASI sustained \$195,175 in damages that resulted from the intentional conduct of all of the Sage Defendants.

As Mr. Zarian and Mr. Luvai were leaving the courthouse that afternoon, they ran into Ms. Sharon Barlow at the entrance of the courthouse. *See* Affidavit of John N. Zarian In Support of American Semiconductor Inc.'s Motion for Costs and Fees Against Sage Defendants ("Zarian Affidavit"), ¶ 56. They understood that she was waiting for her husband to pick her up. *See id.* Mr. Zarian and Mr. Luvai approached Ms. Barlow and inquired as to whether she was comfortable

speaking with them. *Id.* at ¶ 57. Ms. Barlow was very friendly and agreed to speak with them.<sup>1</sup> *Id.* Among other things, she complimented their preparation and presentation of evidence to the jury. *Id.*

During their conversation, Ms. Barlow discussed why the jury crossed out the \$195,175 amount originally written in response to Question 3 on the Special Verdict and replaced it with “0.” *Id.* at ¶ 58. Ms. Barlow indicated that the jury did this because of its understanding that it was not to award the same damages twice based on the Court’s double recovery instruction. *Id.*

At one point during this exchange, Ms. Barlow mentioned that the jury received some “additional guidance” or “further guidance” regarding the foregoing issue. *Id.* at ¶ 59. This may have been a reference to the Court’s double recovery instruction, but Mr. Zarian and Mr. Luvai did not fully understand the comment and did not ask her any follow up questions on that subject at the time. *Id.*

On January 21, 2015, the Court entered, in part, the following judgment:

ASI shall recover the amount of \$195,175 on its tortious interference with prospective economic expectancy against defendants David Roberts, Gyle Yearsly, William Tiffany, and Sage Silicon Solutions, LLC, plus post-judgment interest at the rate of 5.125% per annum.

The judgment entered by the Court made no reference to the jury’s findings of breach of contract and breach of fiduciary duties.

## LEGAL ARGUMENT

### **I. The Court Should Clarify and/or Amend the Rendered Verdict to Accurately Reflect the “True Verdict” Found in the Jury Room.**

#### **A. Correcting the Special Verdict is Necessary and Appropriate.**

When a jury returns a form of verdict, “honestly believing it expressed their decision, whereas

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<sup>1</sup> It is ASI’s understanding that Mr. Zarian and Mr. Luvai were not the only attorneys of record to speak with Ms. Barlow that afternoon. *See* Zarian Affidavit, ¶ 60. As they were preparing to leave the courthouse, Mr. Zarian and Mr. Luvai had a brief conversation with Mr. Bernards who indicated that he too had spoken with Ms. Barlow (about essentially the same issues) based on the understanding that such contact was not precluded. *Id.*

it failed to do so... it is the court's duty, when so apprised, to cause such correction as would enable the filed paper to reflect the true verdict." *Umphrey v. Sprinkel*, 106 Idaho 700 (Idaho 1983) (citing; see also *Glennon v. Fisher*, 51 Idaho 732, 10 P.2d 294, 294 (Idaho 1932); see also *Drainage Dist. No. 2 v. Extension Ditch Co.*, 32 Idaho 314, 182 P. 847 (Idaho 1919) (holding "the court may permit the jury to fortify its verdict or to show by the affidavits of the jurors the verdict which they found and intended to return, and this may be done after they have been discharged").

Here, the jury returned a verdict that appears to indicate the jury may have found ASI sustained no damages from the breaches of contract and fiduciary duties. However, as indicated by the foreperson of the jury, Ms. Barlow, that does not accurately reflect what the jury actually found in the jury room. See Zarian Dec. ¶ 58.<sup>2</sup> This evidenced, in part, by the fact that the jury originally included an amount of \$195,175 (still shown, but crossed out) in response to Question 3 on the Special Verdict.

Because the rendered Special Verdict does not appear to reflect the jury's actual verdict, ASI respectfully requests the Court amend the Special Verdict.

**B. Idaho Rule of Evidence 606(b) Does Not Prohibit Juror Testimony Related to Correcting the Special Verdict.**

Juror testimony submitted for the purpose of correcting a rendered verdict to reflect the actual Special Verdict falls outside of Idaho Rule of Evidence 606(b).

During the January 30, 2015 hearing, prior to restraining any contact with jurors, the Court indicated that ASI's proposed contact with the jury may not be proper because Idaho Rule of Evidence 606(b) prohibits use of juror affidavits to impeach the verdict. Respectfully, however, I.R.E. 606(b) does not expressly prohibit use of juror affidavits to explain/clarify/fortify jury verdicts.

I.R.E. 606(b) provides:

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<sup>2</sup> To the extent the Court allows ASI to contact Ms. Barlow, ASI intends to provide the court with an affidavit containing her testimony that confirms the referenced conversation with her.

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes, but a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror and may be questioned about or may execute an affidavit on the issue of whether or not the jury determined any issue by resort to chance.

I.R.E. 606(b) (emphasis added).

On the other hand, I.R.E. 606(b) is silent as to queries designed to confirm the accuracy of a verdict. This specific issue has not been addressed in Idaho. However, because I.R.E. 606(b) is "patterned directly after its F.R.E. counterpart," it is appropriate to look to federal case law for guidance. *Lehmkuhl v. Bolland*, 114 Idaho 503, 508 (Idaho App. Ct. 1988) (holding I.R.E. prohibits a party from using juror affidavits to impeach the verdict where the issue of clarifying verdicts was not addressed); *see also Chacon v. Sperry Corp.*, 111 Idaho 270, 275 (1986) (interpreting Idaho Rules of Civil Procedure consistent with Federal Rules of Civil Procedure).

The advisory note to Rule 606(b) also supports this reading of the rule. The Tenth Circuit noted:

As the advisory committee observed, the rule against jurors impeaching their own verdict is designed to promote the jury's freedom of deliberation, the stability and finality of verdicts, and the protection of jurors against annoyance and embarrassment. Fed.R.Evid. 606(b), Advisory Committee Note (*citing McDonald v. Pless*, 238 U.S. 264, 35 S.Ct. 783, 59 L.Ed. 1300 (1915)). As the committee further observed, "[a]llowing [jurors] to testify as to matters other than their own inner reactions involves no particular hazard to the values sought to be protected."

*Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1548 (10th Cir. 1993).

In fact, the majority of the United States Court of Appeals recognize that F.R.E. 606(b) does not prohibit juror affidavits to clarify or explain what the jury actually found in the jury room.<sup>3</sup> See *Resolution Trust Corp. v. Stone*, 998 F.2d 1534 (10th Cir. 1993) (affirming the district court's decision to question the jury foreperson as to the jury's "true decision" does not implicate F.R.E. 606(b), but rather a "simple inquiry" to clear up questions "promotes the value of judicial economy"); see also *United States v. Dotson*, 817 F.2d 1127, 1130 (5th Cir.); modified on rehearing, 821 F.2d 1034 (5th Cir. 1987); *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518, 547-48 n. 43 (5th Cir. 1974); *Karl v. Burlington N.R.R.*, 880 F.2d 68, 74 (8th Cir. 1989) (recognizing that rule 606(b) does not bar juror testimony as to whether the verdict delivered in court was that actually agreed upon by the jury, but holding that the error in question went to the validity of the verdict where jurors' testimony and affidavits contained specific references that concerned that jurors' thought processes); *Attridge v. Cencorp Div. of Dover Technologies Int'l, Inc.*, 836 F.2d 113, 116-17 (2nd Cir. 1987) (recognizing that juror testimony is admissible to show that the verdict rendered was not that actually agreed upon, and holding that interviews conducted by the judge were intended to resolve doubts regarding the accuracy of the verdict announced and not to question the process by which those verdicts were reached); *Plummer v. Springfield Terminal Ry.*, 5 F.3d 1, 3-4 (1st Cir. 1993) (agreeing

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<sup>3</sup> Several states also recognize similar rules of evidence do not prohibit such use of juror affidavits. See *Bishop v. GenTec Inc.*, 48 P.3d 218, 227 (2002) (allowing juror affidavits to clarify an error because "accurately recording the intent of the jury in its calculation of the damage award constitutes correction of a clerical error, not a judicial error"); *Martin v. State*, 732 So.2d 847, 854 (Miss. 1998) (holding jury affidavits may be used to correct the rendered verdict to accurately reflect the "true verdict" of the jury where such correction is necessary due to "discrepancies between the verdict delivered and the precise verdict physically or verbally agreed upon in the jury room"); see also *Latino v. Crane Rental Co.*, 417 Mass. 426 (Mass. 1996); *Moisakis v. Allied Bldg. Prods. Corp.*, 265 A.D.2d 457, 692 N.Y.S.2d 100, 105-106 (1999) (noting that juror evidence can be used to correct "clerical errors"); *Newport Fisherman's Supply Co. v. Derecktor*, 569 A.2d 1051, 1052-53 (R.I. 1990); *State v. Williquette*, 190 Wis.2d 677, 526 N.W.2d 144, 151 (1995) (criminal case, but extended by the Wisconsin Supreme Court to both civil and criminal cases).



that juror testimony regarding an alleged error such as announcing a verdict different than that agreed upon, does not challenge the validity of the verdict or the deliberation or mental processes, and therefore is not subject to Rule 606(b)); *McCullough v. Consolidated Rail Corp.*, 937 F.2d 1167, 1171-72 (6th Cir.1991)(recognizing that jurors are competent witnesses on the issue of whether the verdict delivered was the one agreed upon, and holding that it was not error to allow jurors to testify, where the judge limited his inquiry to whether the jury intended an award of \$235,000 minus fifty percent, because he did not inquire into the thought processes of the jurors, but merely asked for clarification of the final award); *Continental Cas. Co. v. Howard*, 775 F.2d 876, 885-86 (7th Cir.1985)(agreeing that Rule 606(b) does not bar testimony by a juror that all jurors agree that through inadvertence, oversight or mistake the verdict announced was not the verdict on which agreement had been reached, but holding that where jurors were polled and affirmed the verdict, and remained silent when asked if they objected to the verdict, and where attorney who had been admonished not to contact jurors but did so anyway, trial judge was not in error in striking affidavit because it was an attempt to testify regarding the jury's thought processes).

The advisory note to Rule 606(b) also supports this reading of the rule. As the Tenth Circuit has noted:

As the advisory committee observed, the rule against jurors impeaching their own verdict is designed to promote the jury's freedom of deliberation, the stability and finality of verdicts, and the protection of jurors against annoyance and embarrassment. Fed.R.Evid. 606(b), Advisory Committee Note (*citing McDonald v. Pless*, 238 U.S. 264, 35 S.Ct. 783, 59 L.Ed. 1300 (1915)). As the committee further observed, "[a]llowing [jurors] to testify as to matters other than their own inner reactions involves no particular hazard to the values sought to be protected."

*Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1548 (10th Cir. 1993).

Significantly, Idaho courts applying I.R.E. 606(b) have done so consistent with the pre-Rule 606(b) decisions. Courts addressing the issue of I.R.E. 606(b) and juror affidavits all involve attempts to impeach the verdict. *See Hall v. State*, 151 Idaho 42 (2010); *Lehmkuhl v. Bollard*, 114 Idaho 503,

757 P.2d 1222 (Idaho Ct. App. 1998) (holding plaintiff could not submit juror affidavits to establish the jury improperly considered insurance when it rendered a verdict that accurately reflected the jury's actual verdict against the plaintiff); *Andrews v. Idaho Forest Industries, Inc.*, 117 Idaho 195, 198, 786 P.2d 586 (Idaho Ct. App. 1990) (holding that a juror's affidavit relating to the internal deliberation process was inadmissible for the purpose of filing a motion for a new trial).

In *Hall v. State*, the Idaho Supreme Court addressed whether it was proper for a criminal defendant – who was convicted of rape and murder and sentenced to death – to contact jurors in an effort to overturn the verdict. *Hall*, 151 Idaho at 718. Hall was seeking to contact jurors in the hopes of learning something that could provide post-conviction relief. *Id.* at 723. In other words, he was trying to improperly impeach the jury's verdict. The issue of whether a juror affidavit may be used to clarify a verdict was not considered by the *Hall* Court. Here, unlike the appellant in *Hall*, ASI is not seeking to contact the jury to overturn the verdict. Instead, ASI seeks to contact the jury foreperson regarding what the jury actually held in regarding to damages relating to the individual defendants' breaching Paragraph 7 of the Employee Confidentiality Agreement.

Thus, the weight of authority supports a finding that I.R.E. 606(b) does not prohibit use of juror affidavits in this fashion, to clarify the verdict. For these additional reasons, ASI respectfully requests leave from the Court to contact the foreperson of the jury.

## **II. The Court Should Amend the Judgment to Correct for Any Irregularities.**

Pursuant to Idaho Rule of Civil Procedure 59(a), the Court may amend the judgment if there is an "irregularity in the proceedings of the court, jury or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial." Idaho Rules of Civil Procedure 59(a)(1).

As detailed below there are grounds in this case that warrant amending the judgment.

**A. Amending the Judgment is Necessary to Give Effect to the Jury's "True Verdict."**

As detailed above in Section I, the jury's actual verdict does not appear to be reflected in the rendered verdict or the judgment. *Infra*. "Courts have inherent power to make their records speak the truth." *Glenmon*, 51 Idaho at 295 (affirming the trial court correcting the judgment to accurately reflect the jury's true verdict). Because the judgment does not accurately reflect the jury's "true verdict," ASI respectfully requests that the Court correct its judgment.

**B. The Judgment Should be Amended to Correct for a Chance Verdict.**

Pursuant to Idaho Rules of Civil Procedure, a court may amend the judgment if there is any jury misconduct. Idaho Rules of Evidence 59(a)(2). "The purpose of the rule prohibiting a chance verdict is to assure that a jury participate in 'solemn deliberation... and avoid a verdict that was irrationally skewed by a minority of 'inveterate juror[s].'" *Watson v. Navistar Intern. Transp. Corp.*, 121 Idaho 643, 671 (1992) (quoting *Cochran v. Gritman*, 34 Idaho 654, 671, 203 P. 289, 294 (1921) and *Flood v. McClure*, 3 Idaho 587, 594, 32 P. 254, 256 (1893)).

Here, there is some evidence that the jury may have crossed out the \$195,175 in response to Question 3 of the Special Verdict by chance. *See* Zarian Affidavit, ¶ 58. Ms. Barlow made no indication that the jury engaged in "solemn deliberation" on the issue of which \$195,175 award (Question 3 or Question 5) they should cross out to comply with the jury instructions. To the extent the jury did not deliberate, it thus reduced the damages on Question 3 from \$195,175 to \$0 by chance.

As such, ASI respectfully requests the Court amend the Judgment to accurately reflect the verdict the jury solemnly deliberated over – an award of \$195,175 in damages for the breaches of contract, fiduciary duties, and intentional interference.

## CONCLUSION

For at least the foregoing reasons, ASI respectfully requests that the Court amend the Judgment to properly reflect the "true verdict" reached by the jury: an award of \$194,175 in damages for the breaches of contract, fiduciary duties, and intentional interference. Amending the judgment accordingly would also correct for any chance verdict in this case.

DATED this 4th day of February, 2015.

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

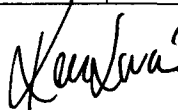
Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower Chad E. Bernards STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: dbower@stm-law.com chad@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com



Kennedy K. Luvai

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SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_  
FILED 455

FEB 04 2015

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDA K  
DEPUTY

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**PLAINTIFF'S MOTION FOR LEAVE  
TO CONTACT JURORS**

**ORAL ARGUMENT REQUESTED**

**DATE: February 19, 2015**

**TIME: 1:30 pm**

Pursuant to the Court's recent ruling during the hearing on January 30, 2015, plaintiff and counterdefendant American Semiconductor, Inc. ("ASI") hereby moves the Court for leave to contact the jury foreperson for the limited purpose of clarifying and/or ascertaining whether the rendered verdict accurately reflects the actual verdict the jury reached in the jury room. To the extent to Court finds such contact unnecessary or improper, ASI respectfully requests leave from the Court to contact the jury on the narrow issue of whether the jury received any "additional guidance" during deliberations and/or whether the reduction of the \$195,175 award in response to Question 3 of the Special Verdict was done by chance.

### **BACKGROUND**

On January 16, 2015, the jury returned a special verdict form ("Special Verdict") which included, in relevant part, as follows:

1. David Roberts, Gyle Yearsley, and William Tiffany were each determined to have breached Paragraph 7 of the Employee Confidentiality Agreement.
2. David Roberts, Gyle Yearsley, and William Tiffany were each determined to have breached their respective duties of loyalty to ASI.
3. The foreman of the jury, Ms. Sharon Barlow, wrote "\$195,175" for the total amount of damages sustained by ASI that were caused by the aforementioned breaches. However, she then crossed that number out and wrote "0."
4. David Roberts, Gyle Yearsley, William Tiffany, and Sage Silicon Solutions, LLC were each determined to have intentionally interfered with ASI's economic expectancy of contracting with Zilog, Inc.
5. The jury found that ASI sustained \$195,175 in damages that resulted from the intentional conduct of all of the Sage Defendants.

The jury thus returned and rendered a verdict in the above-captioned matter on January 16, 2014.

As Mr. Zarian and Mr. Luvai were leaving the courthouse that afternoon, they ran into Ms. Sharon Barlow at the entrance of the courthouse. *See* Affidavit of John N. Zarian In Support of American Semiconductor Inc.'s Motion for Costs and Fees Against Sage Defendants ("Zarian Affidavit"), ¶ 56. They understood that she was waiting for her husband to pick her up *See id.* Mr. Zarian and Mr. Luvai approached Ms. Barlow and inquired as to whether she was comfortable speaking with them. *Id.* at ¶ 57. Ms. Barlow was very friendly and agreed to speak with them.<sup>1</sup> *Id.* Among other things, Ms. Barlow complimented their preparation and presentation of evidence to the jury. *Id.*

During their conversation, Ms. Barlow discussed why the jury crossed out the \$195,175 amount originally written in response to Question 3 on the Special Verdict and replaced it with "0." *Id.* at ¶ 58. Ms. Barlow indicated that the jury did this because of its understanding that it was not to award the same damages twice based on the Court's double recovery instruction. *Id.*

At one point during this exchange, Ms. Barlow mentioned that the jury received some "additional guidance" or "further guidance" regarding the foregoing issue. *Id.* at ¶ 59. This may have been a reference to the Court's double recovery instruction, but Mr. Zarian and Mr. Luvai did not fully understand the comment and did not ask her any follow up questions on that subject at the time. *Id.*

On January 21, 2015, the Court entered, in part, the following judgment:

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<sup>1</sup> It is ASI's understanding that Mr. Zarian and Mr. Luvai were not the only attorneys of record to speak with Ms. Barlow that afternoon. *See* Zarian Affidavit, ¶ 60. As they were preparing to leave the courthouse, Mr. Zarian and Mr. Luvai had a brief conversation with Mr. Bernards who indicated that he too had spoken with Ms. Barlow (about essentially the same issues) based on the understanding that such contact was not precluded. *Id.*



ASI shall recover the amount of \$195,175 on its tortious interference with prospective economic expectancy against defendants David Roberts, Gyle Yearsly, William Tiffany, and Sage Silicon Solutions, LLC, plus post-judgment interest at the rate of 5.125% per annum.

The Court made no reference to the jury's findings of breach of contract and breach of fiduciary duties.

### LEGAL ARGUMENT

#### **I. Idaho Permits Use of Juror Affidavits – and Thus, Post-Trial Contact with Jurors – in Several Circumstances.**

##### **A. The Idaho Supreme Court has Long Differentiated Between Use of Juror Affidavits to Explain/Confirm/Clarify that a Rendered Verdict Reflects the Jury's Actual Verdict and Use of Juror Affidavits to "Impeach" Verdicts.**

The general law in Idaho has long been that "courts may consider [juror] affidavits in order to clarify what the verdict was, but not to impeach the verdict." *Umphrey v. Sprinkel*, 106 Idaho 700 (Idaho 1983); *see also Glennon v. Fisher*, 51 Idaho 732, 10 P.2d 294, 294 (Idaho 1932) (holding when a jury returns a form of verdict, honestly believing it expressed their decision, whereas it failed to do so, "it is the court's duty, when so apprised, to cause such correction as would enable the filed paper to reflect the true verdict"); *see also Drainage Dist. No. 2 v. Extension Ditch Co.*, 32 Idaho 314, 182 P. 847 (Idaho 1919) (holding "the court may permit the jury to fortify its verdict or to show by the affidavits of the jurors the verdict which they found and intended to return, and this may be done after they have been discharged").

In *Umphrey*, the jury awarded a unanimous verdict in favor of the plaintiffs. *Umphrey*, 106 Idaho at 705. After the jury was discharged, plaintiffs moved to "amend and clarify" the verdict based on the jurors' affidavits. *Id.* "Attached to those affidavits were computations used by the jurors in arriving at their verdict." *Id.* The district court then amended the rendered

verdict to accurately reflect what the jury actually found in deliberations. *Id.* The defendants appealed arguing the district court improperly impeached the jury verdict. *Id.* The Idaho Supreme Court disagreed noting that “[w]hen the jurors returned their verdict, they mistakenly, but honestly, believed that it had reflected their decision, but, as shown by their affidavits, it actually did not.” *Id.* The Idaho Supreme Court affirmed the trial court’s correcting the verdict to accurately reflect what the jury found.

Like the plaintiffs in *Umphrey*, ASI is only seeking potentially to submit juror affidavits to clarify and/or confirm the Special Verdict to accurately reflect what the majority of the jurors found in the juror room. Specifically, ASI is seeking to contact the jury foreperson, Ms. Barlow, regarding the amount of damages the jury found that ASI sustained as a direct result of the breaches of Paragraph 7 of the Employee Agreement and fiduciary duties. In effect, ASI seeks to confirm that the rendered verdict accurately reflects the actual verdict. ASI is not seeking to change the verdict reached by the jury in the jury room. Because Ms. Barlow has indicated the jury found ASI was damaged in the amount of \$195,175 due to the breaches of the contract and breaches of fiduciary duties, good cause exists to contact the Ms. Barlow.

Therefore, ASI respectfully requests leave from the Court to contact Ms. Barlow regarding the narrow topic of clarifying what the jury actually found in regards to the amount of damages ASI sustained as a result of the individual defendants’ breaches of the Employee Confidentiality Agreement.<sup>2</sup>

**B. Idaho Rules of Evidence Do Not Prohibit Use of Juror Affidavits Used to Explain/Confirm/Clarify Whether a Rendered Verdict Reflects the Jury’s Actual Verdict.**

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<sup>2</sup> To the extent the Court would require confirmation from each juror who found the individual defendants breached Paragraph 7 of the Employee Confidentiality Agreement, if necessary or appropriate, ASI further requests leave to contact these additional jurors.

During the January 30, 2015 hearing, prior to restraining any contact with jurors, the Court indicated that ASI's proposed contact with the jury may not be proper because Idaho Rule of Evidence 606(b) prohibits use of juror affidavits to impeach the verdict. Respectfully, however, I.R.E. 606(b) does not expressly prohibit use of juror affidavits to explain/clarify/fortify jury verdicts. I.R.E. 606(b) provides:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes, but a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror and may be questioned about or may execute an affidavit on the issue of whether or not the jury determined any issue by resort to chance.

Idaho Rule of Evidence 606(b) (emphasis added).

On the other hand, I.R.E. 606(b) is silent as to queries designed to confirm the accuracy of a verdict. This specific issue has not been addressed in Idaho. However, because I.R.E. 606(b) is "patterned directly after its F.R.E. counterpart," it is appropriate to look to federal case law for guidance. *Lehmkuhl v. Bolland*, 114 Idaho 503, 508 (Idaho App. Ct. 1988) (holding I.R.E. prohibits a party from using juror affidavits to impeach the verdict where the issue of clarifying verdicts was not addressed); *see also Chacon v. Sperry Corp.*, 111 Idaho 270, 275 (1986) (interpreting Idaho Rules of Civil Procedure consistent with Federal Rules of Civil Procedure).

In fact, the majority of the United States Court of Appeals recognize that F.R.E. 606(b) does not prohibit juror affidavits to clarify or explain what the jury actually found in the jury

room.<sup>3</sup> See *Resolution Trust Corp. v. Stone*, 998 F.2d 1534 (10th Cir. 1993) (affirming the district court's decision to question the jury foreperson as to the jury's "true decision" does not implicate F.R.E. 606(b), but rather a "simple inquiry" to clear up questions "promotes the value of judicial economy"); see also *United States v. Dotson*, 817 F.2d 1127, 1130 (5th Cir.); modified on rehearing, 821 F.2d 1034 (5th Cir. 1987); *University Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518, 547-48 n. 43 (5th Cir. 1974); *Karl v. Burlington N.R.R.*, 880 F.2d 68, 74 (8th Cir. 1989) (recognizing that rule 606(b) does not bar juror testimony as to whether the verdict delivered in court was that actually agreed upon by the jury, but holding that the error in question went to the validity of the verdict where jurors' testimony and affidavits contained specific references that concerned that jurors' thought processes); *Attridge v. Cencorp Div. of Dover Technologies Int'l, Inc.*, 836 F.2d 113, 116-17 (2nd Cir. 1987) (recognizing that juror testimony is admissible to show that the verdict rendered was not that actually agreed upon, and holding that interviews conducted by the judge were intended to resolve doubts regarding the accuracy of the verdict announced and not to question the process by which those verdicts were reached); *Plummer v. Springfield Terminal Ry.*, 5 F.3d 1, 3-4 (1st Cir. 1993) (agreeing that juror testimony regarding an alleged error such as announcing a verdict different than that agreed

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<sup>3</sup> Several states also recognize similar rules of evidence do not prohibit such use of juror affidavits. See *Bishop v. GenTec Inc.*, 48 P.3d 218, 227 (2002) (allowing juror affidavits to clarify an error because "accurately recording the intent of the jury in its calculation of the damage award constitutes correction of a clerical error, not a judicial error"); *Martin v. State*, 732 So.2d 847, 854 (Miss. 1998) (holding jury affidavits may be used to correct the rendered verdict to accurately reflect the "true verdict" of the jury where such correction is necessary due to "discrepancies between the verdict delivered and the precise verdict physically or verbally agreed upon in the jury room"); see also *Latino v. Crane Rental Co.*, 417 Mass. 426 (Mass. 1996); *Moisakis v. Allied Bldg. Prods. Corp.*, 265 A.D.2d 457, 692 N.Y.S.2d 100, 105-106 (1999) (noting that juror evidence can be used to correct "clerical errors"); *Newport Fisherman's Supply Co. v. Derecktor*, 569 A.2d 1051, 1052-53 (R.I. 1990); *State v. Williquette*, 190 Wis.2d 677, 526 N.W.2d 144, 151 (1995) (criminal case, but extended by the Wisconsin Supreme Court to both civil and criminal cases).

upon, does not challenge the validity of the verdict or the deliberation or mental processes, and therefore is not subject to Rule 606(b)); *McCullough v. Consolidated Rail Corp.*, 937 F.2d 1167, 1171-72 (6th Cir.1991)(recognizing that jurors are competent witnesses on the issue of whether the verdict delivered was the one agreed upon, and holding that it was not error to allow jurors to testify, where the judge limited his inquiry to whether the jury intended an award of \$235,000 minus fifty percent, because he did not inquire into the thought processes of the jurors, but merely asked for clarification of the final award); *Continental Cas. Co. v. Howard*, 775 F.2d 876, 885-86 (7th Cir.1985)(agreeing that Rule 606(b) does not bar testimony by a juror that all jurors agree that through inadvertence, oversight or mistake the verdict announced was not the verdict on which agreement had been reached, but holding that where jurors were polled and affirmed the verdict, and remained silent when asked if they objected to the verdict, and where attorney who had been admonished not to contact jurors but did so anyway, trial judge was not in error in striking affidavit because it was an attempt to testify regarding the jury's thought processes).

The advisory note to Rule 606(b) also supports this reading of the rule. The Tenth Circuit noted:

As the advisory committee observed, the rule against jurors impeaching their own verdict is designed to promote the jury's freedom of deliberation, the stability and finality of verdicts, and the protection of jurors against annoyance and embarrassment. Fed.R.Evid. 606(b), Advisory Committee Note (*citing McDonald v. Pless*, 238 U.S. 264, 35 S.Ct. 783, 59 L.Ed. 1300 (1915)). As the committee further observed, "[a]llowing [jurors] to testify as to matters other than their own inner reactions involves no particular hazard to the values sought to be protected."

*Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1548 (10th Cir. 1993).

Significantly, Idaho courts applying I.R.E. 606(b) have done so consistent with the pre-Rule 606(b) decisions. Courts addressing the issue of I.R.E. 606(b) and juror affidavits all involve attempts to impeach the verdict. *See Hall v. State*, 151 Idaho 42 (2010); *Lehmkuhl v.*

*Bollard*, 114 Idaho 503, 757 P.2d 1222 (Idaho Ct. App. 1998) (holding plaintiff could not submit juror affidavits to establish the jury improperly considered insurance when it rendered a verdict that accurately reflected the jury's actual verdict against the plaintiff); *Andrews v. Idaho Forest Industries, Inc.*, 117 Idaho 195, 198, 786 P.2d 586 (Idaho Ct. App. 1990) (holding that a juror's affidavit relating to the internal deliberation process was inadmissible for the purpose of filing a motion for a new trial).

In *Hall v. State*, the Idaho Supreme Court addressed whether it was proper for a criminal defendant – who was convicted of rape and murder and sentenced to death – to contact jurors in an effort to overturn the verdict. *Hall*, 151 Idaho at 718. Hall was seeking to contact jurors in the hopes of learning something that could provide post-conviction relief. *Id.* at 723. In other words, he was trying to improperly impeach the jury's verdict. The issue of whether a juror affidavit may be used to clarify a verdict was not considered by the *Hall* Court. Here, unlike the appellant in *Hall*, ASI is not seeking to contact the jury to overturn the verdict. Instead, ASI seeks to contact the jury foreperson regarding what the jury actually held in regarding to damages relating to the individual defendants' breaching Paragraph 7 of the Employee Confidentiality Agreement.

The weight of authority supports a finding that I.R.E. 606(b) does not prohibit use of juror affidavits in this fashion, to clarify the verdict. For these additional reasons, ASI respectfully requests leave from the Court to contact the foreperson of the jury.

## **II. Idaho Allows the Use of Juror Affidavits to Impeach a Verdict in Limited Circumstances.**

To the extent the Court finds the rendered Special Verdict accurately reflects what the jury found in the jury room, ASI respectfully requests the Court leave to contact the jury regarding testimony that would fall outside of I.R.E. 606(b).

There are three exceptions to the prohibitions set forth in I.R.E. 606(b), namely, that a juror may testify or provide an affidavit concerning (a) whether extraneous prejudicial information was improperly brought to the jury's attention; (b) whether any outside influence was improperly brought to bear upon any juror; or (c) whether the jury determined any issue by resort to chance. I.R.E. 606(b).

Here, good cause may exist to contact the jury under two of these limited exceptions.

First, there may be a question as to whether the jury received any "additional guidance" during deliberation. *See* Zarian Affidavit, ¶ 59. ASI respectfully asks the Court for leave to investigate any "additional guidance" the jury may have received during deliberations. *See* I.R.E. 606(b); I I.R.C.P. 51(b) (permitting evidence from jurors concerning outside influences); *Rueth v. State*, 100 Idaho 203, 596 P.2d 75 (Idaho 1978) (communications with the jury following submission of the case must be on the record).

Second, I.R.E. 606(b) permits the receipt of testimony or affidavits of jurors on the issue of whether or not the jury determined any issue by chance. I.R.E. 606(b). From the brief conversation with Ms. Barlow, it appears the jury may have crossed out one of the two \$195,175 damage awards without any deliberation as to why one should be crossed off versus the other. *See* Zarian Affidavit, ¶ 58. For this additional reason, ASI respectfully requests leave from the Court to question the foreperson as to whether the award listed on Question 3, as opposed to the award listed on Question 5, was reduced by chance.

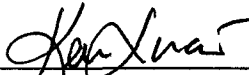
### CONCLUSION

For at least the foregoing reasons, ASI respectfully asks the Court for leave to contact the jury foreperson on the narrow issue of whether the verdict rendered accurately reflects the jury's true verdict. To the extent the Court finds the rendered verdict accurately reflects the jury's true

verdict, ASI respectfully requests leave to contact the jury under one of the limited exceptions to I.R.E. 606(b).

DATED this 4th day of February, 2015.

PARSONS BEHLE & LATIMER

By  \_\_\_\_\_

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com
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\_\_\_\_\_  
Kennedy K. Luvai

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A.M. \_\_\_\_\_ FILED P.M. 455

FEB 04 2015

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*Attorneys for Plaintiff and Counterdefendant  
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*


**AMERICAN SEMICONDUCTOR,  
INC.'S MOTION FOR COSTS AND  
FEES AGAINST THE SAGE  
DEFENDANTS**

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its counsel of record, Parsons Behle & Latimer, and pursuant to Rules 54(d)(1)(B), 54(d)(1)(C), 54(d)(1)(D), and 54(e)(1) of the Idaho Rules of Civil Procedure ("IRCP"), and Idaho Code Section 12-120(3), and as the prevailing party in this matter, hereby files the following Motion for Costs and Fees against the Sage Defendants ("Motion for Costs and Fees"). By this motion, ASI seeks an award in the amount of **\$124,260.86** in costs and **\$535,988.50** in attorneys' and paralegal fees as the prevailing party in the claims litigated against the Sage defendants.

In support of this Motion for Costs and Fees, ASI relies upon the Memorandum of Costs and Fees and accompanying Appendix, the Memorandum in Support of American Semiconductor, Inc.'s Motion for Costs and Fees against the Sage Defendants, the supporting Affidavit of John Zarian, and the supporting Affidavit of Brian Julian, all filed concurrently herewith.

DATED this 4th day of February, 2015.

PARSONS BEHLE & LATIMER

By   
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com
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Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com



Kennedy K. Luvai

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:55

FEB 04 2015

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM IN SUPPORT OF  
AMERICAN SEMICONDUCTOR,  
INC.'S MOTION FOR COSTS AND  
FEES AGAINST THE SAGE  
DEFENDANTS**

**ORIGINAL**  
001806

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its counsel of record, Parsons Behle & Latimer, and pursuant to Rule 54 of the Idaho Rules of Civil Procedure and Idaho Code § 12-120(3), hereby requests an award of attorney's fees against defendants David Roberts ("Roberts"), Gyle Yearsley ("Yearsley"), and William Tiffany ("Tiffany") and costs against defendants Roberts, Yearsley, Tiffany, and Sage Silicon Solutions, LLC. ("Sage").

## **I. INTRODUCTION**

Concurrently herewith, ASI has filed a Memorandum of Costs and supporting affidavit of counsel requesting an award of attorney's fees against Roberts, Yearsley, and Tiffany as well as costs against Roberts, Yearsley, Tiffany, and Sage. As discussed herein, ASI is entitled to its requested attorney's fees and costs because it is the prevailing party overall in this action, having prevailed on the issues of liability, causation, and damages for all of its claims against Roberts, Yearsley, Tiffany, and Sage and having defeated Sage's two counterclaims tried before the jury.

As the prevailing party, ASI is entitled to attorney's fees from Roberts, Yearsley, and Tiffany under the provision for attorney's fees and costs contained in the parties' Employee Confidentiality Agreement ("ECA"). ASI is also entitled to attorney's fees against the individual defendants under Idaho Code § 12-120(3), which provides for attorney's fees in an action to recover for breach of an employment contract.

ASI is requesting that costs be awarded against Roberts, Yearsley, and Tiffany under the ECA's attorney's fee and cost provisions. ASI is also entitled to costs as a matter of right against Sage as well as Roberts, Yearsley, Tiffany under Rule 54(d)(1) of the Idaho Rules of Civil Procedure.

ASI's requested attorney's fees and costs are reasonable and requested in accordance with the requirements of Rule 54. Therefore, ASI asks that all of its attorney's fees and costs requested herewith be awarded and added to the judgment against Roberts, Yearsley, Tiffany, and Sage.

## II. ASI IS THE PREVAILING PARTY IN THIS ACTION

ASI is requesting attorney's fees under Sections 6(c) and 13 of the ECA providing for attorney's fees to the "prevailing party" in any action to enforce the ECA or otherwise "arising under" the ECA and, alternatively, under Idaho Code § 12-120(3) as the "prevailing party" in an action to recover on a "commercial transaction."<sup>1</sup>

Rule 54(d)(1)(B) of the Idaho Rules of Civil Procedure guides the trial court's discretionary determination as to which party to an action is the "prevailing party." *See* I.R.C.P. 54(d)(1)(B). Rule 54(d)(1)(B) directs the court to "consider the final judgment or result of the action in relation to the relief sought by the respective parties." I.R.C.P. 54(d)(1)(D); *Mihalka v. Shepherd*, 145 Idaho 547, 551, 181 P.3d 473, 477 (2008) ("I.R.C.P. 54(d)(1)(B) guides the courts of this state in the determination whether a party may be deemed to be a prevailing party.").

"In determining which party prevailed where there are claims and counterclaims between opposing parties, the court determines who prevailed 'in the action'; that is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis." *Oakes v. Boise Heart Clinic Physicians, PLLC*, 152 Idaho 540, 545, 272 P.3d 512, 517 (2012). In such cases, "[b]oth a party's successes in bringing claims and in defending against them are important to the prevailing party analysis." *Hobson Fabricating Corp. v. SE/Z Construction*,

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<sup>1</sup> The ECA does not define the term "prevailing party" for purposes of the attorney's fee provisions contained in Section 6(c). Regardless, ASI recognizes that the Court must determine prevailing party status in accordance with the guidance set forth by Idaho Rule of Civil Procedure 54(d)(1)(B).

*LLC*, 154 Idaho 45, 50, 294 P.3d 171, 176 (2012) (citing *Oakes v. Boise Heart Clinic Physicians, PLLC*, 152 Idaho 540, 546, 272 P.3d 512, 518 (2012)); *see also* *Nguyen v. Bui*, 146 Idaho 187, 192, 191 P.3d 1107, 1112 (explaining “ there are three principal factors a trial court must consider when determining which party, if any, prevailed: (1) the final judgment or result obtained in relation to the relief sought; (2) whether there were multiple claims or issues between the parties; and (3) the extent to which each of the parties prevailed on each of the claims or issues.”) (citing *Daisy Mfg. Co., Inc. v. Paintball Sports, Inc.*, 134 Idaho 259, 261–62, 999 P.2d 914, 916–17 (Ct.App.2000) ) (Ct. App. 2008).

Taking an “overall view” of the results in this action, ASI is the prevailing party.

**A. ASI Prevailed on All of its Claims Tried Against the Individual Defendants and Sage**

**1. ASI Prevailed on the Pivotal Issue of Liability**

ASI has undisputedly prevailed on the pivotal liability issue for all of its claims tried against the individual defendants and Sage.

This action arose from Roberts, Yearsley, and Tiffany’s employment relationship with ASI and the attendant identical contractual and fiduciary duties not to compete with ASI during their employment. ASI has claimed the individual defendants’ duty not to compete not only prohibited them from working for defendant Zilog, Inc. (“Zilog”) through a competing entity, Sage, but also imposed upon Sage a duty not to provide their services to Zilog. (Likewise, ASI has claimed Zilog wrongfully caused the individual defendants to breach their contractual duty not to compete by retaining their services through Sage.)

For all claims tried before the jury, ASI claimed lost profits resulting from the individual defendants breaching their duty not to compete by diverting (through Sage) ASI’s opportunity to provide design engineering services to its customer, Zilog. Therefore, ASI’s success at trial on



each of its claims depended upon the jury's finding that the individual defendants owed and breached a duty not compete with ASI when they provided design engineering services to Zilog through Sage. For this reason, the pivotal issue in this action was whether or not the individual defendants' working for Zilog through Sage constituted a breach of their duty not to compete with ASI during their employment.

Throughout this lawsuit, the individual defendants vigorously contested the issue of liability by asserting they had ASI's permission to work for Zilog through Sage and, alternatively, that they were not competing with ASI because Zilog was not ASI's customer or potential customer. However, after hearing all of the evidence at trial, the jury entered a verdict against Roberts, Yearsley, and Tiffany on the issue of liability for breaching both their contractual and fiduciary duties not to compete with ASI during their employment. *See* Special Verdict (filed January 16, 2015) at p. 2.

The jury's finding that Roberts, Yearsley, and Tiffany's providing design engineering services to Zilog constituted a breach of their non-compete obligations was also necessary for the jury to have reached their verdict for ASI on its tortious interference with prospective economic expectancy claim against the individual defendants and Sage. In order for ASI to have prevailed on the tortious interference claim, the jury had to find the individual defendants' and Sage's interference with ASI's opportunity to contract with Zilog was "wrongful by some measure beyond the fact of the interference itself." *See Highland Enterprises v. Barker*, 986 P.2d 996, 1004-05, 133 Idaho 330, 338-39 (1999); Final Jury Instructions (filed January 16, 2015), Instruction Nos. 11-14.

As claimed by ASI and proven by the evidence at trial, the individual defendants' interference was wrongful because their non-compete obligations prohibited them from working

for Zilog through their competing entity, Sage. ASI also claimed Sage's interference was wrongful because its members' actions in providing contracted services to Zilog constituted breaching their non-compete obligations to ASI. In other words, the individual defendants' non-compete obligations to ASI imposed upon both them and Sage a duty of non-interference with ASI's prospective customer contract with Zilog. *See Idaho First Nat'l Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 286, 824 P.2d 841, 861 (1991). Therefore, in finding the individual defendants and Sage tortiously interfered with ASI's prospective economic expectancy, the jury clearly had to find the individual defendants' duty not to compete with ASI prohibited them and their entity Sage from contracting with Zilog and, as a result, that the individual defendants' breaching their duty not to compete made the interference wrongful.

For these reasons, ASI clearly prevailed on the pivotal issue of liability underlying all three of ASI's claims tried against the individual defendants and Sage.

## **2. ASI Prevailed on the Issues of Causation and Damages**

ASI has also prevailed on the issues of causation and damages for all of its claims against the individual defendants and Sage.

At trial, ASI sought recovery on all of its claims for a single injury – loss of the opportunity to provide design engineering services to Zilog and resulting lost profits. ASI presented evidence at trial proving its injury and damages resulted from the same activity - *i.e.* from the individual defendants breaching their duty not to compete by providing design engineering services to Zilog through their competing company, Sage, instead of through their employer, ASI. Apparently, for these reasons, the Court decided to instruct the jury that if they determined ASI was “entitled to recover under two claims for the same injury, [it] should not

award more than is required to adequately compensate [ASI] for that one injury.” Final Jury Instructions (filed January 16, 2015), Instruction No. 28.

Evidently, the jury took this instruction to mean that if they found ASI was entitled to damages for lost profits on two or more of its claims, they should enter the amount of damages only once. As a result, despite finding liability on all three of ASI’s claims against the individual defendants, the jury crossed out the amount of damages under the first two claims and entered only one damage award under the third claim, tortious interference with prospective economic expectancy. Nevertheless, the jury could not have found that ASI was damaged by the tortious interference without also finding ASI was damaged by the individual defendants breaching their duties not to compete.

As explained above, the jury could not have found the individual defendants and Sage tortiously interfered with ASI’s prospective economic expectancy in contracting with Zilog without first finding the individual defendants’ interference was wrongful because the interference also constituted breaching their duty not to compete. Thus, the same act constituted both breach of their non-compete obligations and their tortious interference. This is also true for Sage’s interference because Sage’s interference was wrongful by virtue of its members breaching their duties not to compete with ASI.

Because the jury’s finding of liability on all claims against the individual defendants and Sage was based upon the same wrongful acts by the individual defendants – *i.e.* competing with ASI by providing design engineering services to Zilog through Sage – any damages which the jury found ASI sustained as a result of the wrongful interference must also have resulted from the individual defendants breaching their duty not to compete. Therefore, in awarding ASI damages, the jury clearly intended to award ASI damages for the individual defendants’ breaches

of their contractual and fiduciary duties not to compete. However, because the jury apparently understood that the Court's Jury Instruction No. 28 prohibited them from entering the damage award for each of the three claims, it entered the damage amount only for the tortious interference with economic expectancy claim against all the individual defendants and Sage.<sup>2</sup>

Also significant with respect to the issues of causation and damages is the jury's finding that ASI had a valid economic expectancy in contracting with Zilog to provide design engineering services. *See* Final Jury Instructions (filed January 16, 2015), Instruction Nos. 11-14. Throughout this litigation and at trial, both the Sage defendants and Zilog vigorously contested the issue of ASI's expectancy in contracting with Zilog. But, now, the issues of the individual defendants' liability for unlawfully competing with ASI and of ASI's valid economic expectancy in contracting with Zilog have been decided on the merits in ASI's favor for purposes of these and any future proceedings.

Finally, the jury awarded ASI a substantial amount of the damages it claimed for lost profits, which were not merely nominal damages. *See Oakes*, 152 Idaho at 546, 272 P.3d at 518

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<sup>2</sup> During a conversation after the jury rendered its verdict at trial, the jury foreperson indicated to ASI's counsel that the jury had intended to award ASI damages on the breach of contract and breach of fiduciary duty claims as well as for tortious interference with economic expectancy; however, because the jury found ASI was entitled to the same damages – *i.e.*, \$195,175 – for the single resulting injury for all three claims, the jury believed they could enter the amount only once and, for that reason, they entered damages only for the tortious interference with economic expectancy claim. This was the reason why the verdict shows damages in the amount of \$195,175 were entered but then crossed out for the breach of contract and breach of fiduciary duty claims. *See* Affidavit of John N. Zarian In Support of American Semiconductor, Inc.'s Motion for Attorney's Fees and Costs Against the Sage Defendants, § G (¶¶ 55-60).

In light of the jury's apparent confusion about whether or not they could enter a damages award against the individual defendants for their breaches of contract and fiduciary duty, ASI has moved to clarify the verdict to reflect the jury's intent and also to amend/correct the judgment to state that the damages were awarded for ASI's breach of contract and breach of fiduciary duty claims as well as for the tortious interference with economic expectancy claim. The motions to clarify the verdict and amend/correct the judgment, together with supporting affidavits, have been filed contemporaneously with this motion and are incorporated herein by reference.

(considering that plaintiff received a damage award which was more than a nominal amount as a factor making him the prevailing party).

For these reasons, ASI prevailed on the issues of causation and damages for all three claims tried against the individual defendants and Sage.

**B. ASI Prevailed on Sage's Counterclaims**

In addition to prevailing on all three of its claims against the individual defendants and Sage, ASI also undisputedly prevailed on Sage's two counterclaims for tortious interference with contract and unjust enrichment. *See Id.* (finding plaintiff's defeating the defendant's counterclaim supported finding plaintiff was the prevailing party entitled to attorney's fees and costs) (citing *Bates v. Seldin*, 146 Idaho 772, 774, 777, 203 P.3d 702, 704, 707 (2009) and *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 718-19, 117 P.3d 130, 132-33 (2005)).

Thus, ASI has prevailed in this action on the pivotal underlying issue as to the individual defendants' liability for competing with ASI through Sage, on three of its four claims tried against the defendants,<sup>3</sup> and on both of Sage's counterclaims decided by the jury.

Accordingly, ASI is the prevailing party overall in this action.

**III. ASI IS ENTITLED TO RECOVER ATTORNEY'S FEES FROM ROBERTS, YEARSLEY, AND TIFFANY**

**A. ASI is Entitled to Attorney's Fees Under the ECA**

Contractual provisions for payment of attorney's fees and costs are enforceable in Idaho. *See e.g. Mihalka v. Shepherd*, 145 Idaho 547, 551-52, 181 P.3d 473, 477-78 (2008) (citing *Lettunich v. Lettunich*, 141 Idaho 425, 111 P.3d 110 (2005)); *Bank of Idaho v. Colley*, 103 Idaho

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<sup>3</sup> Although ASI did not obtain a judgment against Zilog, in view of the overall outcome, ASI is still the prevailing party on all other pivotal issues and all claims against the Sage defendants as well as on both of the Sage defendants' counterclaims.

320, 326, 647 P.2d 776, 782 (Ct. App.1982); *Triad Leasing & Financial Inc. v. Rocky Mtn. Rogues, Inc.*, 148 Idaho 503, 515, 224 P.3d 1092, 1104 (2009); I.R.C.P. 54(e)(1) (“In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract.”).

In this case, Section 6(c) of the ECA clearly and unambiguously provides for attorney’s fees and costs to the prevailing party in any action to enforce its terms: “The prevailing party in any action to enforce this Agreement shall be reimbursed or paid by the other party for its reasonable attorney’s fees and all costs incurred in connection with such enforcement.” *See* Affidavit of John N. Zarian In Support of American Semiconductor, Inc.’s Motion for Attorney’s Fees and Costs Against the Sage Defendants (“Zarian Aff.”), ¶54, Exs. 35, 36, 37 at pp.2-3. Section 13 of the ECA further provides that “for all matters and actions arising under this Agreement[,t]he prevailing party shall be entitled to reasonable attorney’s fees and costs incurred in connection with such litigation.” *See Id.* at p.4 ASI brought this action against Roberts, Yearsley, and Tiffany to enforce its rights under the ECA’s non-compete clause. As discussed above, ASI has prevailed on its breach of contract claim to enforce the ECA and in this action overall.

Therefore, ASI is entitled to recover its reasonable attorney’s fees incurred in connection with pursuing its breach of contract claims against Roberts, Yearsley, and Tiffany.<sup>4</sup>

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<sup>4</sup> As discussed above in Section II, the issue as to whether the individual defendants breached their duty not to compete with ASI by providing design engineering services to Zilog through Sage was the liability issue for both ASI’s breach of contract and corresponding breach of fiduciary duty claims and was also the pivotal issue for finding liability on ASI’s tortious interference with prospective economic expectancy claim against all the individual defendants and Sage. Furthermore, for all three claims, ASI sought recovery for the same injury and resulting damages– i.e. lost profits from the Zilog opportunity. Therefore, ASI incurred the same attorney’s fees in proving liability and damages for all three claims against the individual defendants and Sage.

**B. ASI is Entitled to Attorney's Fees Under Idaho Code § 12-120(3)**

In addition to being the prevailing party entitled to attorney's fees under the ECA's attorney fee provision, ASI is also entitled to recover attorney's fees from the individual defendants under Idaho Code § 12-120(3), which applies to all three of ASI's claims against the individual defendants.

**1. ASI is Entitled To Attorney's Fees Under Idaho Code § 12-120(3) as The Prevailing Party on All Three of its Claims Against Roberts, Yearsley, and Tiffany**

**a. ASI's Employment Contracts With Roberts, Yearsley, and Tiffany Bring ASI's Claims Within I.C. § 12-120(3)'s Application**

Idaho Code § 12-120(3) mandates that, in any civil action to recover on a contract for services and in any "commercial transaction," "the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs." I.C. § 12-120(3); *Oakes*, 152 Idaho at 546, 272 P.3d at 518 (emphasizing I.C. § 12-120's attorney fee provisions are "mandatory") (quoting *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 721, 117 P.3d 130, 135 (2005)). Under § 12-120(3), "[t]he term 'commercial transaction' is defined to mean all transactions except transactions for personal or household purposes." *Id.*

The Idaho Supreme Court has established that "an employment contract constitutes a contract for the purchase or sale of services under that statute." *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 244, 108 P.3d 380, 391 (2005); *see also Oakes*, 152 Idaho at 547, 272 P.3d at 519 ("Actions brought for breach of an employment contract are considered commercial transactions, subject to the attorney fee provision of I.C. § 12-120(3)); *Treasure Valley Gastroenterology Specialists v. Woods*, 135 Idaho 485, 492, 20 P.3d 21, 28 (Ct. App. 2001) ("Actions on employment contracts are subject to the attorney fee provisions of §12-120(3)."); *Willie v. Board*

of *Trustees*, 138 Idaho 131, 136, 59 P.3d 302, 307 (2002) (“Actions brought for breach of an employment contract are considered commercial transactions and are subject to the attorney fee provision of I.C. 12-120(3).”).

In an action involving an employment contract for services, the prevailing party claiming breach of the employment contract is entitled to attorney’s fees from the other party under § 12-120(3) if (1) the employment contract is integral to the prevailing party’s claims; and (2) the employment contract is the basis upon which the prevailing party sought recovery. *See Great Plains Equipment, Inc. v. Northwest Pipeline Corp.*, 136 Idaho 446, 471, 36 P.3d 218, 223 (2001) (setting forth the two-stage analysis for determining whether a prevailing party may avail itself of I.C. § 12-120(3)). That is, §12-120(3) applies when the employment contract comprises the “gravamen of the lawsuit.” *See Great Plains*, 136 Idaho at 471, 36 P.3d at 223; *Oakes*, 152 Idaho at 547, 272 P.3d at 519 (explaining I.C. § 12-120(3) is an applicable ground for an award of attorney fees to the prevailing party when the gravamen of the action is breach of the parties’ employment contract).

This action arises out of ASI’s employment contract with Roberts, Yearsley, and Tiffany wherein Roberts, Yearsley, and Tiffany agreed to provide engineering services and to abide by the ECA’s terms in exchange for the salaries and benefits paid to them by ASI. More specifically, this action arose out of and is based upon Roberts, Yearsley, and Tiffany’s breaching their contractual obligation not to compete with ASI during their employment by working for Zilog through ASI’s competitor, Sage. (The formation and existence of ASI’s employment contract, including the ECA’s non-compete provisions, were undisputed in this action.) Therefore, this action involves an employment contract to which § 12-120(3) applies



and, as further discussed below, the individual defendants' breach of their employment contract with ASI is the gravamen of ASI's lawsuit.

b. ASI's Employment Contracts with Roberts, Yearsley, and Tiffany were Integral to and the Gravamen of ASI's Claims for Recovery in this Action

Without question, ASI's employment relationship with Roberts, Yearsley, and Tiffany is the basis of ASI's causes of action against all of the defendants in this lawsuit. Roberts, Yearsley, and Tiffany's obligations not to compete with ASI during their employment arose solely from their employment relationship with ASI. All of ASI's claims against the defendants presented to the jury arose out of Roberts, Yearsley, and Tiffany's breaching their non-compete obligations imposed by their employment relationship with ASI.

The basis giving rise to ASI's claim for breach of the contractual duty not to compete – *i.e.* the individual defendants providing design engineering services to Zilog through Sage – is the same basis giving rise to ASI's claims against the individual defendants for breach of fiduciary duty and tortious interference with prospective economic expectancy. ASI's claim for breach of the fiduciary duty of loyalty is based upon a fiduciary duty not to compete, which arose from the employment relationship and which was identical to the individual defendants' contractual duty not to compete. The claim is also based upon the individual defendants' same competitive activities constituting breach of their contractual duty not to compete.

The individual defendants' duty not to compete is also the basis upon which ASI has claimed the right to protection from the individual defendants' and their conduit Sage's usurpation of the opportunity to provide design engineering services to Zilog. This duty was likewise the basis upon which ASI claimed the right to protection from Zilog's tortious interference with ASI's rights and expectations under the ECA's non-compete clause. Roberts, Yearsley, and Tiffany's competitive activities in working for Zilog, which breached their duty

not to compete, also constituted their wrongful interference with ASI's prospective economic expectancy in contracting with Zilog. Furthermore, for all claims presented at trial, ASI sought recovery for lost profits caused by the individual defendants' competing with ASI in diverting the Zilog opportunity.

Therefore, all of ASI's claims tried before the jury arose from and were based upon the individual defendants' employment relationship with ASI, and, specifically, involved the individual defendants' breaching their duty not to compete with ASI during their employment.

Accordingly, ASI's employment contract with the individual defendants is unquestionably the gravamen of ASI's lawsuit.

- c. ASI is Entitled to I.C. § 12-120(3) Attorney's Fees as Prevailing Party on its Claims for Breach of Fiduciary Duty and Tortious Interference with Prospective Economic Advantage

Idaho Code § 12-120(3) provides for attorney's fees in an action to recover on a commercial transaction involving tortious conduct when " 'the commercial transaction is integral to the claim, and constitutes the basis upon which the party is attempting to recover.' " *Lee v. Nickerson*, 146 Idaho 5, 11-12, 189 P.3d 467, 473-74 (2008) (quoting *Blimka v. My Web Wholesaler, LLC*, 143 Idaho 723, 728, 152 P.3d 594, 599 (2007)) (holding defendants were entitled to reasonable attorney's fees under I.C. § 12-120(3) relating to their successful defense of contractor's tort claim for their allegedly withholding his equipment on their property because the commercial transaction, the parties' contract, initiated the presence of the contractor's equipment on defendants' property and was integral to the contractor's claim); *Esser Electric v. Lost River Ballistics*, 145 Idaho 912, 921, 188 P.3d 854, 863 (2008) (holding a commercial transaction involving a contract for electrical work was the gravamen of the parties' lawsuit, integral to all claims, and the basis upon which the parties sought recovery on their respective

claims and counterclaims, and, therefore, attorney's fees were awardable under I.C. § 12-120(3) on defendants' counterclaim for fraudulent billing, which arose out of the manner in which plaintiff/counterdefendant billed for its contracted work); *Blimka v. My Web Wholesaler*, 143 Idaho 723, 728-29, 152 P.3d 594, 599-600 (2007) (establishing the commercial transaction ground in I.C. § 12-120(3) does not prohibit a fee award for a commercial transaction involving tortious conduct and holding the prevailing plaintiff was entitled to attorney's fees on a fraud claim arising from a commercial transaction for wholesale sale of jeans "as he is seeking recovery of damages sustained as a result of the commercial transaction involved in this case").

As already discussed above, ASI's breach of fiduciary duty and tortious interference with prospective economic expectancy claims against the individual defendants arose from their employment relationship, which employment relationship is a commercial transaction under § 12-120(3). ASI's right to protection from Roberts, Yearsley, and Tiffany's competition and resulting interference with prospective customer contracts was based upon the individual defendants' duty not to compete arising from their employment relationship. ASI's basis for recovery on both of those tort claims was the individual defendants' breaching their duty not to compete with ASI during their employment by diverting Zilog's business for themselves through Sage.

Therefore, ASI's tort claims against the individual defendants arose out of the manner in which the individual defendants performed their employment obligations to ASI – *i.e.* without regard for their contractual and fiduciary obligations not to compete with ASI by directly competing with and diverting business from ASI. *See Esser Elec.*, 145 Idaho at 921, 188 P.3d at 863; *Blimka*, 143 Idaho at 728-29, 152 P.3d at 599-600. In other words, Roberts, Yearsley, and Tiffany's tortious conduct breached their employment obligations to ASI and directly interfered

with ASI's right to be protected from their competition during the parties' employment relationship. ASI's tort claims were alternatives to the breach of contract claims as basis for recovering its lost profits from the individual defendants' competitive activities in usurping the Zilog opportunity. *See Erickson v. Flynn*, 138 Idaho 430, 437-38, 64 P.3d 959, 966-67 (2003) (holding I.C. § 12-120(3) applies to unjust enrichment and quantum meruit claims which are presented in the alternative to a commercial breach of contract cause of action and which are based upon the same facts and circumstances as the breach of contract claim).

For the foregoing reasons, attorney's fees under § 12-120(3) are awardable to ASI as the prevailing party at trial on all claims against Roberts, Yearsley, and Tiffany.

**C. ASI'S Requested Attorney's Fees Are Reasonable**

The attorney's fees requested by ASI in this action were necessarily incurred in pursuing this action against Roberts, Yearsley, and Tiffany. *See* I.R.C.P. 54(e)(3); American Semiconductor, Inc.'s Memorandum of Costs and Fees; Zarian Aff., ¶¶ 1-3, §§ A, C, D, E. ASI's requested attorney's fees are also reasonable considering the relative complexity of this action to enforce the individual defendants' duty not to compete.

Pursuing this action has involved not only establishing that the individual defendants engaged in unlawful competition but also determining the engineering design services they performed for Zilog, the circumstances surrounding their development work for Zilog, the full scope of work that ASI would have expected to provide to Zilog if it had obtained the opportunity to do so, and the amount of ASI's lost profits from the lost opportunity with Zilog. In addition, Roberts, Yearsley, and Tiffany vigorously contested both liability and damages, including by bringing dispositive motions and by attempting to exclude ASI's industry and damages experts. *See* Zarian Aff., ¶ 49.

Under the circumstances, ASI's requested attorney's fees are reasonable and warranted. I.R.C.P. 54(e)(3); American Semiconductor, Inc.'s Memorandum of Costs and Fees; Zarian Aff., ¶¶ 1-3, §§ A, B, C, D, E.

**D. ASI Has Properly Requested Reasonable Paralegal Fees**

Pursuant to Idaho Rule of Civil Procedure 53(e)(1), ASI is also requesting reasonable paralegal fees incurred in pursuing its claims against Roberts, Yearsley, and Tiffany. *See* I.R.C.P. 54(e)(1); *P.O. Ventures, Inc. v. Loucks Family Irrevocable Family Trust*, 144 Idaho 233, 239, 159 P.3d 870, 876 (2007) (recognizing the trial court's discretion under I.R.C.P. 54(e)(1) to award reasonable paralegal fees incurred for paralegal work); American Semiconductor, Inc.'s Memorandum of Costs and Fees; Zarian Aff., ¶¶ 1-3, §§ A, B (¶¶ 39, 40, 41), C, D (¶ 46).

ASI's requested paralegal fees are reasonable and were incurred in performing paralegal work. *See P.O. Ventures*, 144 Idaho at 239, 159 P.3d at 876; Zarian Aff., ¶¶ 1-3, §§ A, B (¶¶ 39, 40, 41), C, D (¶ 46).

**IV. ASI IS ENTITLED TO RECOVER COSTS AGAINST ROBERTS, YEARSLEY, TIFFANY, AND SAGE**

**A. ASI Is Entitled to Costs against Roberts, Yearsley, and Tiffany Under The ECA**

As discussed above, Sections 6(c) and 13 of the ECA clearly and unambiguously provide for attorney's fees and costs to the prevailing party in any action to enforce the ECA. Zarian Aff., ¶54, Exs. 35, 36, 37 at pp.2-3. Therefore, as the prevailing party in this action to enforce Roberts, Yearsley, and Tiffany's non-compete obligations under the ECA, ASI is entitled to costs incurred in connection with pursuing its breach of contract claim. *See e.g. Mihalka v. Shepherd*,

145 Idaho 547, 551-52 181 P.3d 473, 477-78 (2008) (citing *Lettunich v. Lettunich*, 141 Idaho 425, 111 P.3d 110 (2005)).<sup>5</sup>

**B. ASI Is Entitled to Costs as a Matter of Right Under I.R.C.P. 54(d)(1) against Roberts, Yearsley, Tiffany, and Sage**

Even if the Court concludes ASI is not entitled to recover costs under the ECA, as the prevailing party in its action against the individual defendants and Sage, and on Sage's counterclaims, ASI is entitled to costs against the individual defendants and Sage as a matter of right under Idaho Rule of Civil Procedure 54(d)(1)(C). *See* I.R.C.P. 54(d)(1)(C).


Therefore, ASI is claiming all cost items enumerated by Rule 54(d)(1)(C) which it has actually paid in pursuing its claims against Roberts, Yearsley and Tiffany.<sup>6</sup> *See* American Semiconductor, Inc.'s Memorandum of Costs and Fees; Zarian Aff., ¶¶ 1-3, §§ E.

**V. CONCLUSION**

For all of the reasons set forth herein, ASI respectfully submits that it is entitled to be awarded the attorney's fees and costs requested in its Memorandum of Costs filed contemporaneously herewith.

DATED this 4<sup>th</sup> day of February, 2015.

PARSONS BEHLE & LATIMER

By  \_\_\_\_\_

John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

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<sup>5</sup> As with ASI's attorney's fees awardable under the ECA, ASI has incurred the same costs in proving liability, causation, and damages for all three of its claims against the individual defendants and Sage.

<sup>6</sup> Once again, as with ASI's costs awardable under the ECA, ASI has incurred the same costs in pursuing claims against the individual defendants and Sage. ASI has also segregated its costs incurred in connection with defending against the Sage defendants' counterclaims for unjust enrichment and tortious interference with contract.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: dbower@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com

*Kennedy K. Luvai*

Kennedy K. Luvai

FEB 04 2015

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Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S MOTION FOR  
ATTORNEY FEES AND COSTS**



COMES NOW the Defendant, Zilog, Inc. ("Zilog"), by and through its counsel of record, Moffatt, Thomas, Barrett, Rock & Fields, Chartered, and hereby moves this Court for an award of Zilog's costs and attorney fees against Plaintiff, American Semiconductor, Inc. ("ASI"), and/or its counsel of record, the law firm of Parsons Behle & Latimer, pursuant to Idaho Rules of Civil Procedure 11(a)(1), 37, 41(a)(2), 54(d), 54(e) and 68, as well as Idaho Code Sections 12-120(3) and 12-121, as follows:

(1) Pursuant to Idaho Rules of Civil Procedure 54(d)(1) and 68 and the Offer of Judgment by Defendant Zilog, Inc., dated December 19, 2014, Zilog seeks an award of its costs as a matter of right and its discretionary costs against ASI.

(2) Pursuant to Idaho Rule of Civil Procedure 54(e)(1) and Idaho Code Section 12-120(3), Zilog seeks an award of all of its reasonable attorney fees against ASI on the grounds that Zilog is the principal prevailing party in this case, the gravamen of this case is founded on a commercial transaction and a contract for the purchase of services, and there is in this case a good faith basis for the extension, modification or reversal of existing law.

(3) Pursuant to Idaho Rule of Civil Procedure 41(a)(2), Zilog seeks an award against ASI of Zilog's reasonable attorney fees incurred in defense of ASI's trade secret claims against Zilog prior to June 30, 2014, on the grounds that ASI's claims may be dismissed at ASI's instance only by Order of the Court and only "upon such terms and conditions as the [C]ourt deems proper" under Rule 41(a)(2).

(4) Pursuant to Idaho Rule of Civil Procedure 37, Zilog seeks an award against ASI and/or its counsel of record, the law firm of Parsons Behle & Latimer, of Zilog's reasonable costs and attorney fees incurred in connection with Zilog, Inc.'s Motion to Compel,

Zilog, Inc.'s Motion for Sanctions, and Zilog, Inc.'s Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1), on the grounds that:

(a) As the Court has already ruled, ASI failed or refused to comply with the Court's oral ruling from the Bench at the hearing on Zilog, Inc.'s Motion to Compel on May 2, 2014 (as well as the Court's subsequent written Order Regarding Zilog, Inc.'s Motion to Compel) because ASI intentionally failed or refused, by May 23, 2014, to describe with reasonable specificity, each and every trade secret or trade secrets owned by ASI that were the subject matter of this action, and thereby caused prejudice to Zilog; and

(b) Thereafter, ASI failed or refused to comply with the Court's oral ruling from the Bench at the hearing on Zilog, Inc.'s Motion for Sanctions on July 18, 2014 (as well as the Court's subsequent written Order on Zilog, Inc.'s Motion for Sanctions) because ASI intentionally failed or refused, by August 4, 2014, to supplement ASI's response to Zilog's Interrogatory No. 3 to describe with reasonable specificity each and every trade secret or trade secrets owned by ASI which were the subject matter of this action, and thereby caused further prejudice to Zilog.

(5) Pursuant to Idaho Rule of Civil Procedure 11(a)(1), Zilog seeks an award against ASI and/or the law firm of Parsons Behle & Latimer of Zilog's reasonable attorney fees incurred in defense of ASI's trade secret claims against Zilog, prior to June 30, 2014, on the grounds that ASI and said law firm filed and pursued said trade secret claims against Zilog in ASI's Second Amended Complaint, thereby certifying that "to the best of the signer's knowledge, information and belief after reasonable inquiry" such claims were "well grounded in fact" and not filed "for any improper purpose," when such claims were not well grounded in fact and were filed for an improper purpose.

(6) Pursuant to Idaho Rule of Civil Procedure 54(e)(1) and Idaho Code Section 12-121, Zilog seeks an award of its attorney fees against ASI on the grounds that ASI brought and pursued its case against Zilog frivolously, unreasonably or without foundation.

\* \* \*

This motion is based upon the record herein, including but not limited to the following:

(a) Defendant Zilog, Inc.'s Memorandum of Fees and Costs, the Declaration of Gerald T. Husch in Support of Zilog Inc.'s Motion for Attorney Fees and Costs, the Declaration of Cheryl L. Dunham in Support of Zilog Inc.'s Motion for Attorney Fees and Costs, and the Memorandum in Support of Zilog's Motion for Attorney Fees and Costs, filed herewith;

(b) Zilog, Inc.'s Motion to Compel, the Memorandum in Support of Zilog, Inc.'s Motion to Compel, and the Declaration of Stephen R. Thomas in Support of Zilog, Inc.'s Motion to Compel, all of which were filed herein on or about April 18, 2014;

(c) the Court's oral rulings from the Bench on May 2, 2014, which were transcribed and made part of the record herein, and the Court's subsequent written Order Regarding Zilog, Inc.'s Motion to Compel, which Order was filed herein on or about June 18, 2014;

(d) Zilog, Inc.'s Motion for Sanctions, the Memorandum in Support of Zilog, Inc.'s Motion for Sanctions, and the Declaration of Gerald T. Husch in Support of Zilog, Inc.'s Motion for Sanctions, all of which were filed on or about July 3, 2014;

(e) Defendant Zilog, Inc.'s Notice of Errata Regarding the Memorandum in Support of Zilog, Inc.'s Motion for Sanctions, filed July 9, 2014;

(f) the Reply in Support of Zilog, Inc.'s Motion for Sanctions, filed on or about July 16, 2014;

(e) the Court's oral rulings from the Bench on July 18, 2014, which were transcribed and made part of the record herein, and the Court's written Order on Zilog, Inc.'s Motion for Sanctions, which Order was filed herein on or about August 27, 2014; and

(f) Zilog's Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1), and the Memorandum and the Declarations of Gerald T. Husch, Dan Eaton, David Staab, and Monte Dalrymple in Support of Zilog's Renewed Motion for Sanctions Pursuant to I.R.C.P. 37 and Motion for Sanctions Pursuant to I.R.C.P. 11(a)(1), all of which were filed herein on or about September 12, 2014.

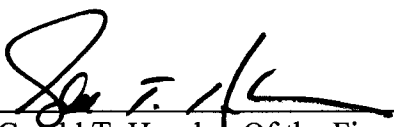
WHEREFORE, Zilog respectfully requests the Court to enter its Order and Judgment awarding to Zilog and against Plaintiff, American Semiconductor, Inc. ("ASI"), and/or its counsel of record, the law firm of Parsons Behle & Latimer, Zilog's costs and attorney fees reasonably incurred in defense of this action or such other relief as the Court deems proper.

ORAL ARGUMENT IS REQUESTED.

DATED this 4th day of February, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By

  
Gerald T. Husch - Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 2015, I caused a true and correct copy of the foregoing **ZILOG, INC.'S MOTION FOR ATTORNEY FEES AND COSTS** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

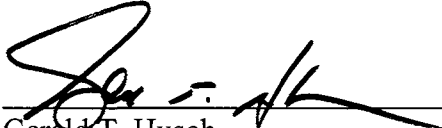
☒ (x) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
12550 W. Explorer Dr., Suite 100  
Boise, ID 83713  
Facsimile (208) 345-4461  
*Attorneys for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☒ (x) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
800 W. Main St., Suite 1300  
Boise, ID 83702  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ ( ) U.S. Mail, Postage Prepaid  
☒ (x) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

  
Gerald T. Husch

**FEB 04 2015**

**CHRISTOPHER D. RICH, Clerk**  
By **KATRINA HOLDEN**  
DEPUTY

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
Andrea J. Rosholt, ISB No. 8895  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
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srt@moffatt.com  
gth@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S MEMORANDUM OF  
FEES AND COSTS**

COMES NOW, Defendant Zilog, Inc. ("Zilog"), by and through undersigned counsel of record, and pursuant to the Idaho Rules of Civil Procedure ("I.R.C.P.") 11(a)(1), 41(a)(2), 54(d), 54(e) and 68, as well As Idaho Code Sections 12-120(3) and 12-121, hereby files Zilog, Inc.'s Memorandum of Fees and Costs ("Memorandum of Fees and Costs"). This Memorandum of Fees and Costs is supported by the Declaration of Gerald T. Husch in Support of Zilog, Inc.'s Motion for Attorney Fees and Costs ("Husch Dec."), filed herewith.

**I.  
RECAPITULATION OF COSTS AND ATTORNEY FEES.**

Zilog hereby submits the following recapitulation of the costs and attorney fees it incurred in the defense of this litigation brought against them by plaintiff, American Semiconductor, Inc. ("ASI"), which costs and fees, to the best of Zilog's knowledge and belief, are correct and in compliance with I.R.C.P. 54(c) and 54(d)(1):

**COSTS (Sections II and III, *Infra*)**

I.R.C.P. 54(d)(1)(C) Costs as a Matter of Right	\$ 19,929.72
I.R.C.P. 54(d)(1)(D) Discretionary Costs	\$ 62,469.50
<b>TOTAL COSTS:</b>	<b><u>\$ 82,399.22</u></b>

**ATTORNEY FEES (Section IV, *Infra*)**

Gerald T. Husch, <sup>1</sup> 127.6 hrs @ \$265/hr / 1,313.4 hrs @ \$275/hr	\$ 394,999.00
Stephen R. Thomas, <sup>2</sup> 127.2 hrs @ \$295/hr / 14.8 hrs @ \$310/hr	\$ 42,112.00
Andrea J. Rosholt, 714.2 hrs @ \$225/hr	\$ 160,695.00
Kirk J. Houston, 125.4 hrs @ \$225/hr	\$ 28,215.00
Cheryl L. Dunham, 259.6 hrs @ \$135/hr / 1,378.4 hrs @ \$140/hr	\$ 228,022.00
Janet Yerrington, 64.6 hrs @ \$140/hr	\$ 9,044.00
Jerry Stenquist, 59.0 hrs @ \$140/hr	\$ 8,260.00

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<sup>1</sup> Gerald T. Husch, Stephen R. Thomas, and Tyler J. Anderson are partners at Moffatt Thomas. Andrea J. Rosholt and Kirk J. Houston are associate attorneys at Moffatt Thomas. Cheryl L. Dunham, Janet Yerrington and Tina Moore are paralegals at Moffatt Thomas. Jerry Stenquist was a paralegal at Moffatt Thomas at the time of his billing entries.

<sup>2</sup> Stephen R. Thomas' time does not include the 85.9 hours that he was at the courthouse during the trial.

**ATTORNEY FEES (Section IV, *Infra*)**

Tina Moore, 51.2 hrs @ \$140/hr	\$ 7,168.00
<b>TOTAL ATTORNEY FEES</b>	<b>\$ 878,515.00</b>

<b><u>TOTAL COSTS AND ATTORNEY FEES</u></b>	<b><u>\$ 960,914.22</u></b>
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**II.**

**I.R.C.P. 54(d)(1)(C). COSTS – ITEMS ALLOWED – AS A MATTER OF RIGHT**

The following costs were actually paid and Zilog is entitled to such costs as a matter of right:

**1. Court Filing Fees:**

08/05/2013 – Filing Fee – Notice of Appearance	\$ <u>66.00</u>
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**2. Actual Fees for Service of Process:**

None.

**3. Witness Fees:**

None.

**4. Trial Witness Travel Fees:<sup>3</sup>**

01/15/2015 – Travel fee for David Staab (838.1 miles)	\$ <u>251.43</u>
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**5. Certified Copies of Documents Admitted as Trial Exhibits:**

None.

**6. Cost of Trial Exhibits:**

Reasonable Cost of Trial Exhibits, Not to Exceed \$500 <sup>4</sup>	\$ <u>500.00</u>
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**7. Cost of Bond Premiums:**

None.

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<sup>3</sup> All trial witness travel fees have been calculated in accordance with I.R.C.P. 54(d)(1), at \$.30 per mile, one way.

<sup>4</sup> Defendant incurred a total cost of \$552.00 for preparation of its trial exhibits. Pursuant to IRCP 54(d)(1)(C)(6), costs as a matter of right under this category may not exceed \$500.00. Therefore, the remainder of this expense (\$52.00) is claimed under discretionary costs, *infra*.



**8. Reasonable Expert Witness Fees, not to Exceed \$2,000  
for Each Expert Witness:**

Defendants' Expert Monte Dalrymple <sup>5</sup>	\$ 2,000.00
Defendants' Expert Charles Donohoe <sup>6</sup>	\$ 2,000.00
Defendants' Expert Dennis Reinstein <sup>7</sup>	\$ 2,000.00
<b>TOTAL</b>	<b>\$ 6,000</b>

**9. Charges for Reporting and Transcribing Depositions:**

10/15/2014 – Deposition of Douglas Hackler (ASI 30(b)(6) witness)	\$ 503.14
10/15/2014 – Deposition of Douglas Hackler, Vol. 2	\$ 131.25
10/30/2014 – Deposition of Richard S. Hoffman (1/2)	\$ 509.09
10/30/2014 – Deposition of Stephen D. Holland (1/2)	\$ 672.67

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<sup>5</sup> Defendants incurred a total of \$17,860.46 in charges for the services rendered by Monte Dalrymple, in defense of the trade secret claims brought against them by ASI and subsequently withdrawn on or about August 4, 2014. Mr. Dalrymple issued a written expert report, provided valuable information in opposition to ASI's Motion in Limine #4 Re: Monte Dalrymple, and testified at deposition on October 8, 2014. To save costs for their clients, the defendants agreed to share the expense of hiring Mr. Dalrymple as their joint forensic engineering expert, splitting the charges for services rendered by Mr. Dalrymple in half, for a total amount owed by Zilog of \$8,930.23. Pursuant to I.R.C.P. 54(d)(1)(C)(8), costs as a matter of right under this category may not exceed \$2,000 per expert. Therefore, the remainder of this expense (\$6,930.23) is claimed under discretionary costs, *infra*.

<sup>6</sup> Defendants incurred a total of \$36,021.52 in charges for the services rendered by Charles Donohoe, in defense of contract standards and other related claims brought against them by ASI. Mr. Donohoe issued a written expert report, provided valuable information in opposition to ASI's Motion in Limine #2 Re: Charles Donohoe, and testified at deposition on October 8, 2014. To save costs for their clients, the defendants agreed to share the expense of hiring Mr. Donohoe as their joint contract standards expert, splitting the charges for services rendered by Mr. Donohoe in half, for a total amount owed by Zilog of \$18,010.76. Pursuant to I.R.C.P. 54(d)(1)(C)(8), costs as a matter of right under this category may not exceed \$2,000 per expert. Therefore, the remainder of this expense (\$16,010.76) is claimed under discretionary costs, *infra*.

<sup>7</sup> Defendants incurred a total of \$53,574.50 in charges for the services rendered by forensic accounting expert, Dennis Reinstein, who issued a written expert report and a written supplemental expert report, testified at deposition on November 5, 2014, and again on December 16, 2014, and at trial. To save costs for their clients, the defendants agreed to share the expense of hiring Mr. Reinstein as their joint forensic accounting expert, splitting the charges for services rendered by Mr. Reinstein in half, for a total amount due from Zilog of \$26,787.25. Pursuant to I.R.C.P. 54(d)(1)(C)(8), costs as a matter of right under this category may not exceed \$2,000 per expert. Therefore, the remainder of this expense (\$24,787.25) is claimed under discretionary costs, *infra*.

<b>Total Charges for Depositions Taken by Defendant</b>	<b>\$</b>	<b>1,816.15</b>
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**10. Charges for One Copy of any Deposition:**

02/11/2014 – Deposition of David Roberts (Sage 30(b)(6) witness, Vol. 1)	\$	621.85
02/11/2014 – Deposition of Gyle Yearsley (Sage 30(b)(6) witness, Vol. 2)	\$	189.74
02/12/2014 – Deposition of William Tiffany (Sage 30(b)(6) witness, Vol. 3)	\$	179.75
02/12/2014 – Deposition of Charles Steven Darrough (Zilog 30(b)(6) witness, Vol. 1)	\$	192.37
02/12/2014 – Deposition of Lloyd Dat Hunyh (Zilog 30(b)(6) witness, Vol. 2)	\$	102.25
02/12/2014 – Deposition of David Staab (Zilog 30(b)(6) witness, Vol. 3)	\$	184.34
03/04/2014 – Deposition of David Staab (Zilog 30(b)(6) witness, Vol. 4)	\$	524.13
03/12/2014 – Deposition of Sean D. Beck	\$	140.46
03/12/2014 – Deposition of Sonia Daley	\$	125.16
03/12/2014 – Deposition of Alan Shaw	\$	149.90
05/05/2014 – Deposition of Russell Lloyd	\$	307.82
05/05/2014 – Deposition of Evelyn Perryman	\$	216.24
06/09/2014 – Deposition of David Staab (Zilog 30(b)(6) witness, Volumes 5 & 6)	\$	522.16
06/18/2014 – Deposition of Gyle Yearsley (Sage 30(b)(6) witness, Vol. 4)	\$	738.13
06/19/2014 – Deposition of David Roberts, Vol. 2 (Sage 30(b)(6) witness)	\$	599.01
06/20/2014 – Deposition of William Tiffany, Volumes 1 & 2	\$	363.95
06/25/2014 – Deposition of Richard Chaney	\$	851.40
06/26/2014 – Deposition of Dale Wilson, Volumes 1 & 2	\$	830.37
06/27/2014 – Deposition of Douglas Hackler, Vol. 1	\$	693.77
08/27/2014 – Deposition of Lorelli Hackler	\$	453.15
09/02/2014 – Deposition of Rick White, Volumes 1 & 2	\$	352.03
10/07/2014 – Deposition of John M. Janzen, EdD, CRC	\$	335.49
10/08/2014 – Deposition of Monte Dalrymple	\$	375.40
10/08/2014 – Deposition of Charles Donohoe	\$	334.38
11/05/2014 – Deposition of Dennis Reinstein, CPA, Vol. 1	\$	459.83
12/16/2014 – Deposition of Dennis Reinsten, CPA, Vol. 2	\$	305.55
12/19/2014 – Deposition of David Roberts, Vol. 3 (Sage 30(b)(6) witness)	\$	296.11
12/19/2014 – Deposition of David Staab (Zilog 30(b)(6) witness, Vol. 7)	\$	403.54
12/19/2014 – Deposition of Gyle Yearsley (Sage 30(b)(6) witness, Vol. 5)	\$	217.04
12/19/2014 – Deposition of William Tiffany, Vol. 3	\$	<u>230.82</u>

**Total Charges for 1 Copy of Deposition Transcripts** \$ 11,296.14

**TOTAL COSTS UNDER I.R.C.P. 54(d)(1)(C)** \$ 19,929.72

**III.**

**I.R.C.P. 54(d)(1)(D). DISCRETIONARY COSTS.**

**1. Westlaw Online Research**

Westlaw - online research (caselaw retrieval)	\$ 18.14
Legal Research re 30(b)(6) depositions	\$ 190.89
Legal Research re abuse of process claims	\$ 65.14
Legal Research re enforceability of common law assignment of invention clauses and scope of available remedies	\$ 102.92
Legal Research re jury instructions	\$ 256.91
Legal Research re lost profits standards	\$ 539.30
Legal Research re motion for sanctions re withdrawal of trade secret claims	\$ 377.59
Legal Research re opposition to plaintiff's motion to amend compliant to add prayer for punitive damages	\$ 879.48
Legal Research re plaintiff's motion in limine #13 (shepardize brief and/or caselaw retrieval)	\$ 237.85
Legal Research re tortious interference with contract and economic expectancy claims	\$ 356.45
Legal Research re Zilog's motion for sanctions and plaintiff's opposition to same	\$ 1,798.94
Legal Research re Zilog's motion for summary judgment	\$ 2,080.90
Legal Research re Zilog's motion to strike (caselaw retrieval)	\$ 54.72
Legal Research re Zilog's oppositions to ASI's motions in limine	\$ 452.37
Legal Research re Zilog's reply in support of motion for sanctions (shepardize brief and/or caselaw retrieval)	\$ 440.35
Legal Research re Zilog's reply in support of motion for summary judgment (shepardize brief and/or caselaw retrieval)	\$ 526.38
Legal Research re Zilog's responses to ASI's motions in limine	\$ 273.57
Legal Research re unfair trade secret practices and claims	\$ 222.79
<b>Subtotal Item 1</b>	<b>\$ <u>8,874.69</u></b>

**2. Mileage/Travel Reimbursement<sup>8</sup>**

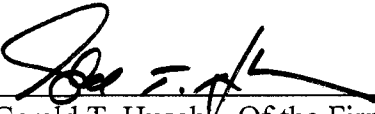
Gerald T. Husch, travel to/from Portland, OR to attend the deposition of Rick White in Portland, OR (airfare, hotel, tips, meals and auto rental)	\$ 528.70
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<sup>8</sup> All witness travel fees have been calculated in accordance with I.R.C.P. 54(d)(1) at \$.30 per mile, one way.

Charles Steven Darrough, travel to Boise from Gilroy, CA for his deposition of 02/12/2014 (859.5 miles)	\$	257.85
Lloyd Dat Hunyh, travel to Boise from San Jose, CA for his deposition of 02/12/2014 (832.1 miles)	\$	249.63
David Staab, travel to Boise, ID from Los Gatos, CA for his deposition of 02/12/2014 (838.1 miles)	\$	251.43
David Staab, travel to Boise, ID from Los Gatos, CA for his deposition of 03/04/2014 (838.1 miles)	\$	251.43
David Staab, travel to Boise, ID from Los Gatos, CA for his deposition of 06/09/2014 (838.1 miles)	\$	251.43
David Staab – travel to Boise, ID from Los Gatos, CA for his deposition of 12/19/2014 (838.1 miles)	\$	251.43
<b>Subtotal Item 2</b>	\$	<b><u>2,041.90</u></b>
 <b>3. Expert Fees in Excess of \$2,000</b>		
Defendants' Expert Monte Dalrymple	\$	6,930.23
Defendants' Expert Charles Donohoe	\$	16,010.76
Defendants' Expert Dennis Reinstein	\$	24,787.25
<b>Subtotal Item 3</b>	\$	<b><u>47,728.24</u></b>
	\$	
<b>4. Mediation Fee</b>		
1/3 of Mediation Fee to mediator Ronald D. Schilling	\$	933.00
<b>Subtotal Item 4</b>	\$	<b><u>933.00</u></b>
 <b>5. Trial Exhibits in Excess of \$500</b>		
Trial Exhibits	\$	52.00
<b>Subtotal Item 5</b>	\$	<b><u>52.00</u></b>
 <b>6. Other Necessary and Exceptional Expenses</b>		
Copies of pleadings from the Clerk of the Court	\$	365.00
Sue Wolf - Transcript of 5/2/2014 court hearing	\$	504.00
Vanessa Gosney - Transcript of 7/18/2014 court hearing	\$	230.05
Vanessa Gosney - Transcript of 9/26/2014 court hearing	\$	506.25
Christie Valcich - Transcript of 9/26/2014 court hearing	\$	337.50
Sue Wolf - Transcript of 11/4/2014 court hearing	\$	896.87
<b>Subtotal Item 5</b>	\$	<b><u>2,839.67</u></b>
 <b>TOTAL COSTS UNDER I.R.C.P. 54(d)(1)(D)</b>	\$	<b><u><u>62,469.50</u></u></b>

DATED this 4th day of February, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch — Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 2015, I caused a true and correct copy of the foregoing **ZILOG, INC.'S MEMORANDUM OF FEES AND COSTS** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions,  
LLC; David Roberts; Gyle Yearsley; and  
William Tiffany*

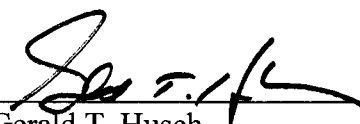
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STEWART TAYLOR & MORRIS PLLC  
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Boise, ID 83713  
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*Attorneys for Counterclaimants Sage Silicon  
Solutions, LLC; David Roberts; Gyle Yearsley;  
and William Tiffany*

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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
\_\_\_\_\_  
Gerald T. Husch

FEB 04 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
Andrea J. Rosholt, ISB No. 8895  
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25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DECLARATION OF  
CHERYL L. DUNHAM**

CHERYL L. DUNHAM, declares and states as follows:

1. I am a Senior Paralegal employed at the law firm Moffatt, Thomas, Barrett, Rock & Fields, Chartered ("Moffatt Thomas") and make this declaration upon my own personal knowledge. I have been employed by Moffatt Thomas since 1987.
2. Since Moffatt Thomas was retained by Zilog, Inc. ("Zilog") to represent its interests in this matter, I have been involved in, among other duties, document management and handling the various document productions.
3. During the production phase in this matter, whenever possible, documents produced by Moffatt Thomas were processed and converted to PDF format for production. When documents could not be processed and converted to PDF files, they were produced in their native format.
4. Throughout the course of this action, I have been involved in the production of more than 60,000 pages of documents or electronic files. I have produced documents Bates numbered Z000001 – Z036792 in response to American Semiconductor, Inc.'s ("ASI's") requests for production of documents. In addition to these numbered documents, I have produced three (3) disks containing native files; (1) disk Z005923 contained approximately 18,211 native files; (2) disk Z005924 contained approximately 6,698 native files; and (3) disk Z035593 contained approximately 135 native files.
5. Documents and electronic files were received from our client on more than 40 separate occasions. All of these documents and electronic files have been stored in their original format, in electronic folders bearing the date that the documents were received from Zilog.




6. On or about February 11, 2014, I received a group of documents from our client for supplemental production. Included in this group of documents was a Power Point presentation, identified as Z6480 POP L1 Rev 001.ppt. This document was subsequently produced on February 12, 2014, in PDF format, and Bates numbered Z011589 – Z011609. This document was also marked as Exhibit 102 during the deposition of Steve Darrough, taken on February 12, 2014. Plaintiff also marked this document as Plaintiff's Trial Exhibit 42, which was admitted on January 9, 2015.

7. Without opening the original file, I was able to run a metadata report to identify the built-in properties embedded in the native PPT document. Attached hereto as **Exhibit A** is true and correct copy of the metadata report for Z6480 POP L1 Rev 001.ppt.

I declare under penalty of perjury under the law of the state of Idaho that the foregoing is true and correct.

DATED this 4th day of February, 2015.

  
Cheryl L. Dunham

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 2015, I caused a true and correct copy of the foregoing **DECLARATION OF CHERYL L. DUNHAM** to be served by the method indicated below, and addressed to the following:

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*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

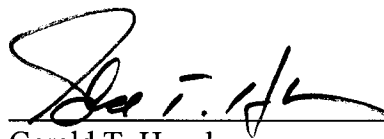
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Daniel W. Bower  
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*Attorneys for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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☒ Hand Delivered  
☐ Overnight Mail  
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Gerald T. Husch

# **EXHIBIT A**

**Analyzing:** T:\Discovery\25332.0000\2014-02-11 - Client Docs - Z011578 - Z011614\Z6480 POP L1 Rev 001.ppt

**Metadata Assistant Version:** 4.1.1410.1306

**Execution Mode:** Stand Alone

**Document Name:** Z6480 POP L1 Rev 001.ppt

**Document Format:** MSPowerPoint

**System File Properties:**

System File Properties: 3

Created Date: 2/11/2014 7:23:53 PM

Modified Date: 2/11/2014 7:20:25 PM

Accessed Date: 3/25/2014 3:18:55 PM

**Built-in Document Properties:**

Built-in Properties with Metadata: 9

Title: ZiLOG

Subject: ZiLOG 8-/16-bit Flash MCU Market Primer

Author: Davis Huang

Keywords:

Comments:

Last Saved By: Steve Darrough

Revision Number: 921

Last Print Date:

Creation Date: 1/11/2006 11:30:13 AM

Modified Date: 11/17/2010 11:13:08 AM

Total Editing Time: 40663

Category:

Manager:

Company: ZiLOG

Hyperlink Base:

Status:

**Convert to Pictures:**

Embedded Objects: 1

Object 1: Object 5

Type: Visio.Drawing.11

Slide: Slide 8

**Remove Personal Information:**

Remove Personal Information: Off

**Offslide objects:**

Offslide Objects: 1

Object 1: Text Box 13

Type: Text box

Slide: Slide Master

NO. \_\_\_\_\_  
 AM. \_\_\_\_\_ FILED PM. 5

FEB 05 2015

CHRISTOPHER D. RICH, Clerk  
 By JAMIE MARTIN  
 DEPUTY

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 COOPER & LARSEN, CHARTERED  
 151 North Third Avenue, Second Floor  
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*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
 Gyle Yearsley, William Tiffany and Evelyn Perryman*

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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
 an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
 Idaho Corporation; ZILOG, INC., a  
 Delaware Corporation; DAVID ROBERTS,  
 GYLE YEARSLEY, WILLIAM TIFFANY  
 and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**JOINDER WITH ZILOG, INC.'S  
 MOTION FOR ATTORNEY FEES AND  
 COSTS**

RELATED COUNTER ACTIONS

ORIGINAL 001846

Neville / Janet  
 me 2/6/15

TR

Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany (collectively the "Sage Defendants") hereby join Defendants Zilog, Inc.'s Motion for Attorney Fees and Costs. The Sage Defendants previously joined Zilog's renewed motion for sanctions based on IRCP 37 and IRCP 11. Zilog incorporates the prior motions for sanction and supporting documents in the Motion for Attorney Fees and Costs and the Sage Defendants again join to reduce the amount of documents that need to be filed with the Court.

American Semiconductor, Inc. ("ASI") alleged the same Idaho Trade Secret Act violation against the Sage Defendants and Zilog, Inc. ("Zilog"). Second Amend. Comp., ¶¶ 94-99. Zilog's memorandum in support of the renewed motion for sanctions and the memorandum supporting the motion for attorney fees and costs demonstrate that ASI failed to abide by the Court's discovery orders regarding the proper disclosure of ASI's alleged trade secret and that ASI did not have a reasonable basis in fact or law to believe that any defendant violated the Idaho Trade Secret Act. The Sage Defendants spent significant time and resources defending the alleged violation of the Idaho Trade Secret Act and continued to do so even after ASI failed to comply with the Court's deadline for ASI to supplement its discovery responses. ASI's failure to comply with the Court's discovery orders and to pursue the trade secret claim without any factual basis significantly increased the cost of defending this action. Therefore, the Sage Defendants join Zilog's Motion for Attorney Fees and Costs on all arguments related to IRCP 37, IRCP 11 and IC § 12-121.

DATED this 5<sup>th</sup> day of February, 2015.

COOPER & LARSEN

  
\_\_\_\_\_  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
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☐ Express mail  
☐ Hand delivery  
☒ Electronic delivery [gth@moffatt.com](mailto:gth@moffatt.com)  
☐ Fax: 208-385-5384

  
\_\_\_\_\_  
GARY L. COOPER

Neville) Janet  
KLR 2/10/15

ORIGINAL

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

FEB 09 2015

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

John N. Zarian, ISB No. 7390  
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SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S REQUEST FOR  
CLARIFICATION OF DEADLINE  
TO OBJECT TO DEFENDANTS'  
MOTIONS FOR FEES AND COSTS  
(AND REQUEST FOR TELEPHONIC  
CONFERENCE)**

Se



Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following memorandum concerning the due dates for its response and objections to defendants' motions for fees and costs, together with a request for a telephonic conference to discuss the same, to the extent necessary.

### **BACKGROUND**

On February 3, 2015, the Hon. Thomas F. Neville's clerk advised counsel (by email) that Judge Neville would like to set a hearing on February 19 for anticipated motions for attorney fees and costs, and all counsel advised that they would try to make that hearing date work.

On February 4, 2015, ASI filed its motion for costs and fees against defendants David Roberts, Gyle Yearsley, William Tiffany and Sage Silicon Solutions, LLC (the "Sage Defendants"), along with supporting papers. ASI also filed a motion for leave to contact jurors, as well as a motion to clarify/amend the verdict and/or judgment in this matter.

On February 4, 2015, the "Sage Defendants" also filed a motion for fees and costs against ASI arguing that they prevailed on the claims asserted against them by ASI. In support of that motion, the Sage Defendants filed a supporting memorandum and a declaration of counsel.

In addition, on February 4, 2015, defendant Zilog, Inc. filed a motion for fees and costs. In addition to seeking relief under I.R.C.P. 54(d)(1) and I.R.C.P. 54(e)(1), however, Zilog apparently seeks to recover from ASI and its counsel on several independent grounds, including I.R.C.P. 41(a)(2), I.R.C.P. 37 and I.R.C.P. 11(a)(1). In support of these motions, Zilog filed a memorandum of costs, a 41-page over-length memorandum, and a lengthy declaration of counsel attaching voluminous pages of exhibits. Zilog also filed a motion for relief from protective order accompanied by supporting papers.

The Sage Defendants have purported to "join" in Zilog's motion for fees and costs.

As noted above, on February 3, 2015 – the day before and any of the foregoing motions were filed – the Court inquired of counsel whether February 19, 2015 at 1:30 p.m. would work for a hearing on motions for attorney fees and costs. Counsel for ASI and all other counsel confirmed that they would make themselves available for that date.

However, as of February 3, 2015, counsel and the Court did not have the benefit of knowing whether what motions were being filed. Furthermore, counsel and the Court did not discuss the issue of objection windows under I.R.C.P. 54(d)(6) and I.R.C.P. 5(e)(6).

### **RULE 54 TIMEFRAMES AT ISSUE**

I.R.C.P. 54(d)(6) provides that “[a]ny party may object to the claimed costs of another party set forth in a memorandum of costs by filing and serving on adverse parties a motion to disallow part or all of such costs within fourteen (14) days of the service of the memorandum of cost[s].” The same rule goes on to provide that failure to timely object, *i.e.* failure to object within 14 days of the service of the memorandum of costs, “shall constitute a waiver of all objections to the costs claimed.”

I.R.C.P. 54(e)(6) provides that “[a]ny objection to the allowance of attorney fees, or to the amount thereof, shall be made in the same manner as an objection to costs as provided by Rule 54(d)(6).” Accordingly, under I.R.C.P. 54(e)(6), responses to the motions for attorneys’ fees are also due within 14 days of the service of such motions or are otherwise deemed waived.

### **DISCUSSION**

As a party objecting to motions for fees and costs that were filed on February 4, 2015, Rule 54 provides that ASI has until February 18, 2015 to serve its objections.

Presently, ASI appreciates that the objection window provided by Rule 54 will result in its objections (and other parties’ objections) being due the day before the presently set hearing.

Furthermore, in view of the filings last week, given the nature and volume of defendants' motions for attorney fees and costs and additional motions, ASI perceives that it will require, at the risk of prejudice, the full 14-day objection window provided for under Rule 54.

In particular, ASI requires that full objection period in order to fully brief the gross overreaching on the part of the defendants in filing their motions for fees and costs.

For example, even though the jury found in favor of ASI and the Court entered a money judgment in favor of ASI, the Sage Defendants' are seeking nearly \$400,000 in fees and costs based on their argument that they prevailed at trial. Zilog, for its part, has filed a motion for fees and costs that goes well beyond any costs that it would be entitled to as a matter of right under Rule 54. Relying on numerous other grounds and highly factual arguments, Zilog seeks nearly \$1 million in fees and costs not only against ASI but, remarkably, also against ASI's counsel. In support of their motions, defendants have numerous briefs, including an over-length brief from Zilog, and hundreds of pages of exhibits attached to supporting declarations and affidavits.


Given the legal theories advanced and amount of fees and costs sought by these defendants, ASI requires an ample and fair opportunity to analyze and respond to defendants' submissions, any contraction of the statutorily imposed 14-day objection window will prejudice ASI. On the other hand, ASI appreciates that filing its objections after 14 days will result in a submission just one day before the presently scheduled hearing.

Under the circumstances, ASI respectfully seeks clarification and/or requests a telephone conference, to the extent necessary, between the parties and the Court to address these matters.

Counsel for ASI are generally available for such a telephone conference this week.

DATED this 9th day of February, 2015.

PARSONS BEHLE & LATIMER

By   
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: gary@cooper-larsen.com barbie@cooper-larsen.com

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Chad E. Bernards  
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*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: dbower@stm-law.com chad@stm-law.com suzie@stm-law.com

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Facsimile: (208) 385-5384  
*Attorneys for Defendant Zilog, Inc.*

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<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Facsimile
<input type="checkbox"/>	Email: srt@moffatt.com gth@moffatt.com



Kennedy K. Luvai

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SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. *4/17*

FEB 12 2015

CHRISTOPHER D. RICH, Clerk  
By TENILLE RAD  
DEPUTY

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S MOTION TO CONTINUE  
HEARING ON MOTIONS FOR FEES  
AND COSTS PURSUANT TO RULES  
54 AND 7**

**[ORAL ARGUMENT REQUESTED]**

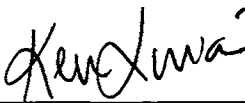
**DATE: February 19, 2015  
TIME: 1:30 p.m.**

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its counsel of record, Parsons Behle & Latimer, and pursuant to Rules 54 and 7 of the Idaho Rules of Civil Procedure, hereby moves for an order continuing the presently set February 19, 2015 hearing on the pending motions for fees and costs and any related motions to disallow to a date that will allow for a fair opportunity, under the rules, to allow for briefing of pertinent issues.

In support of this motion, ASI relies upon the accompanying supporting memorandum, the pleadings and records on file in this matter, all matters which the Court may take judicial notice, such matters as may be presented by counsel at or prior to any hearing, and upon such other evidence or argument as may be considered by the Court prior to ruling on this motion.

DATED this 12th day of February, 2015.

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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Pocatello, ID 83205-4229  
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Facsimile: (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

☐ U.S. Mail, Postage Prepaid  
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☐ Email: gary@cooper-larsen.com  
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Daniel W. Bower  
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*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

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Kennedy K. Luvai



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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:00

FEB 12 2015

CHRISTOPHER D. RICH, Clerk  
By TENILLE RAD  
DEPUTY

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM IN SUPPORT OF  
AMERICAN SEMICONDUCTOR,  
INC.'S MOTION TO CONTINUE  
HEARING ON MOTIONS FOR FEES  
AND COSTS PURSUANT TO RULES  
54 AND 7**

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following memorandum in support of its accompanying motion to continue the hearing presently set February 19, 2015, at least as to the pending motions for fees and costs.

### **BACKGROUND**

On February 9, 2014, ASI filed a Request for Clarification of Deadline to Object to Defendants' Motions for Fees and Costs (and Request for Telephonic Conference) ("Request for Clarification"). The facts outlined below are largely taken from the background section of that Request for Clarification.

On February 3, 2015, the Hon. Thomas F. Neville's clerk advised counsel (by email) that Judge Neville would like to set a hearing on February 19, 2015 for anticipated motions for attorney fees and costs, and all counsel advised that they would try to make that date work for a hearing. Counsel for ASI and all other counsel confirmed that they would make themselves available on that date. However, as of February 3, 2015, neither counsel nor the Court had the benefit of knowing what motions would be filed. Furthermore, counsel and the Court did not discuss a briefing schedule or objection windows under I.R.C.P. 54(d)(6) and I.R.C.P. 5(e)(6).

On February 4, 2015, ASI filed its motion for costs and fees against defendants David Roberts, Gyle Yearsley, William Tiffany and Sage Silicon Solutions, LLC (the "Sage Defendants"), along with supporting papers. ASI also filed a motion for leave to contact jurors, as well as a motion to clarify/amend the verdict and/or judgment in this matter.

Also on February 4, 2015, counsel for ASI received the "Sage Defendants" (somewhat unexpected) motion for fees and costs against ASI arguing that they prevailed on the claims

asserted against them by ASI, even though ASI obtained verdicts against them. In support of this motion, the Sage Defendants filed a supporting memorandum and a declaration of counsel.

In addition, on February 4, 2015, defendant Zilog, Inc. filed an unexpectedly sweeping motion for fees and costs. The motion seeks relief under I.R.C.P. 54(d)(1) and I.R.C.P. 54(e)(1); however, Zilog predicates the motion (against ASI and its counsel) on a number of grounds, including I.R.C.P. 41(a)(2), I.R.C.P. 37 and I.R.C.P. 11(a)(1). In support of this motion, Zilog filed a memorandum of costs, a 41-page over-length memorandum, and a lengthy declaration of counsel attaching voluminous pages of exhibits. Zilog also filed a motion for relief from protective order accompanied by supporting papers.

The Sage Defendants purported to “join” in Zilog’s motion for fees and costs, without explaining how the arguments made in Zilog’s motion allegedly apply to the Sage Defendants.

In light of defendants’ voluminous filings and the uncertainty regarding the timeframes governing objections to the pending motions for fees under I.R.C.P. 54(d)(6) and I.R.C.P. 54(e)(6), ASI filed the Request for Clarification on February 9, 2015. As of the filing of this motion, ASI has not received clarification. Out of an abundance of caution, this motion follows.

### **LEGAL STANDARDS**

The timing and manner of objecting to an opposing party’s memorandum of costs is governed by Rule 54(d)(6). That rule provides that:

Any party may object to the claimed costs of another party set forth in a memorandum of costs by filing and serving on adverse parties a *motion to disallow* part or all of such costs within *fourteen (14) days of service* of the memorandum of cost. Such motion shall not stay execution on the judgment, exclusive of costs, and *shall be heard and determined by the court as other motions under these rules*. Failure to timely object to the items in the memorandum of costs shall constitute a waiver of all objections to the costs claimed.

I.R.C.P. 54(d)(6) (emphasis added).

Objections to motions seeking the award of prevailing party attorneys' fees are governed by Rule 54(e)(6), which states:

Any objection to the allowance of attorney fees, or to the amount thereof, shall be made in the same manner as an objection to costs as provided by Rule 54(d)(6). The court may conduct an evidentiary hearing, if it deems it necessary, regarding the award of attorney fees.

I.R.C.P. 54(e)(6).

### **ARGUMENT**

**A. ASI DID NOT WAIVE ITS RIGHT TO THE FULL BRIEFING SCHEDULE UNDER RULES 54 AND 7, AND, BASED ON DEFENDANTS' SUBMISSIONS, GENUINELY REQUIRES THE BRIEFING TIME PROVIDED BY THE RULES.**

As previously noted, counsel for ASI responded to the Court clerk's inquiry, made on behalf of Judge Neville, regarding counsel's availability for a hearing on February 19, 2015. This exchange took place before any motions were filed. By this exchange, ASI did not intend to waive its right to the fourteen day period within which to file its motions to disallow defendants' memoranda of costs and fees under Rule 54. Rule 54's timeframes govern given that defendants filed their motions for fees and costs under and pursuant to that rule.

As noted above, the question of a briefing schedule did not feature in the exchanges between counsel and the Court, and neither counsel nor the Court addressed the issue. Further, ASI's Request for Clarification did not yield any response from the Court or defendants.

As stated in ASI's Request for Clarification, given the sweeping nature and extensive volume of defendants' motions for attorney fees and costs and additional motions, ASI perceives that it will require, at the risk of prejudice, the full 14-day objection window provided for under Rule 54.

In particular, ASI requires that full objection period in order to fully brief the gross overreaching on the part of the defendants in filing their motions for fees and costs.

For example, even though the jury found in favor of ASI and the Court entered a money judgment in favor of ASI, the Sage Defendants are seeking nearly \$400,000 in fees and costs from ASI based on their argument that they prevailed at trial. Zilog, for its part, has filed a motion for fees and costs that goes well beyond any costs that it would be entitled to under Rule 54. Relying on various grounds and highly factual arguments, Zilog seeks nearly \$1 million in fees and costs not only against ASI but, remarkably, also against ASI's counsel. In support of their motions, defendants have filed numerous briefs, including an over-length brief from Zilog, and hundreds of pages of exhibits attached to supporting declarations and affidavits.

Given the legal theories advanced and amount of fees and costs sought by these defendants, ASI requires an ample and fair opportunity to analyze and respond to defendants' submissions. Under the circumstances, any contraction of the 14-day objection window imposed under Rule 54 will severely prejudice ASI.

**B. ASI RESPECTFULLY SUBMITS THAT THE FEBRUARY 19, 2015 HEARING ON THE MOTIONS FOR ATTORNEYS FEES, AS CURRENTLY SET, DOES NOT COMPORT WITH RULES 54 AND 7, AND SHOULD BE CONTINUED.**

Rule 54(d)(6) provides that a party seeking to object to a memorandum of costs has fourteen (14) days in which to file its motion to disallow. By its terms, this rule does not appear to grant the Court discretion to reduce that time afforded for making such objections.

Because Rule 56(e)(6) provides that objections to motions for attorneys' fees under Rule 54 shall be treated in the same manner as objections to memoranda of costs, the same holds true with regard to motions for attorneys' fees.

Further, Rule 56(d)(6) provides that objections to memoranda of costs are to be made by filing a motion to disallow part or all of such claimed costs, and that such a motion is to be heard and determined "under the rules," namely, Rule 7(a)(3). In turn, Rule 7(a)(3) provides that, as a general matter, a written motion "shall be filed with the court, and served so that it is received by the parties no later than fourteen (14) days before the time specified for the hearing."

In this case, under Rule 54 and Rule 7, ASI's motions to disallow defendants' motions for attorneys' fees and costs are due to be filed on or around February 18, 2015, and, ASI submits, should for hearing no sooner than fourteen days after the date of filing. Furthermore, under Rule 7, defendants should then have at least seven days from the date of the hearing in which to serve oppositions. ASI would then have an opportunity to serve a reply brief at least two days prior to the hearing. Unfortunately, the February 19, 2015 hearing setting will not afford ASI (or the other parties for that matter) a fair opportunity to brief the issues to be raised in the motions to disallow as contemplated by Rule 54.


The complications presented under the circumstances of this case are highlighted by the Sage Defendants' motion to disallow ASI's request for costs and attorneys' fees, which was served as the undersigned was preparing to file the instant motion. Evidently, the Sage Defendants hope or intend to have their motion to disallow heard on February 19, 2015; however, if so, service of that motion today (February 12, 2015) does not comply with Rule 7. As noted above, Rule 7 mandates that, unless otherwise ordered or specified elsewhere in the rules, such a motion to disallow should be filed and served so as to be received by the parties no later than fourteen (14) days before the hearing. Otherwise, ASI's opposition to the Sage Defendants' motion to disallow would be due today, seven (7) days before the hearing.

**CONCLUSION**

Accordingly, ASI respectfully submits that any hearing on the pending motions for fees and costs and motions to disallow should be set for a date and time that will allow for a fair opportunity to brief, under the rules, the issues raised in defendants' motions for fees and costs and any oppositions to ASI's motions to disallow.

DATED this 12th day of February, 2015.

PARSONS BEHLE & LATIMER

By   
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

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Kennedy K. Luvai



FEB 13 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

Gary L. Cooper - Idaho State Bar #1814  
COOPER & LARSEN, CHARTERED  
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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

RELATED COUNTER ACTIONS


CASE NO. CV-OC-1123344

**SAGE DEFENDANTS' MOTION TO  
DISALLOW ASI'S REQUEST FOR  
COSTS AND ATTORNEY FEES**

COME NOW the Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany, by and through their attorneys of record, and request that this Court deny American Semiconductor, Inc.'s ("ASI") request for costs and attorney fees. This motion is brought pursuant to IRCP 54(d)(6). This motion is supported by the Memorandum in Opposition to ASI's Request for Costs and Attorney Fees that is being filed concurrently with this motion.

DATED this 12<sup>th</sup> day of February, 2015.

COOPER & LARSEN

  
\_\_\_\_\_  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702


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☐ Hand delivery  
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kluvai@parsonsBehle.com  
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GARY L. COOPER

FEB 13 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EYELYN  
PERRYMAN, and Defendants DOES 1- X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, RUSSELL  
LLOYD, WILLIAM TIFFANY, EVELYN  
PERRYMAN, individuals,

Counterclaimants,

vs.

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Counterdefendant.

Case No. CV-OC-1123344

**AFFIDAVIT OF DONALD J.  
FARLEY**

STATE OF IDAHO                    )  
  : ss.  
County of Ada                    )

**DONALD J. FARLEY**, after being first duly sworn on oath, deposes and states as  
follows:

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1. I am over the age of 18 and have personal knowledge of the matters set forth in this Affidavit.

2. I am a member of the law firm of Powers Tolman Farley, PLLC, in its Boise, Idaho, office. I have been a shareholder and officer in the firm since January 2, 2013. My law practice currently, and over the years, has focused on civil litigation. Prior to joining my current law firm, I was a founder and Managing Shareholder of Farley Oberrecht Harwood & Burke, P.A., and as it was formerly known, Hall, Farley, Oberrecht & Blanton, P.A. I practiced law with a specialty in civil litigation and trial work with Hall Farley and subsequently the Farley Oberrecht law firm from 1988 to the end of the year, 2012. From 1975 to 1988, I was an attorney, shareholder and member of the Board of Directors of the firm then known as Moffatt, Thomas, Barrett, Rock & Fields. I graduated from the University of Idaho College of Law in 1973 and served a two year clerkship to then United States District Court Judge J. Blaine Anderson until 1975 when I entered private practice. I have an undergraduate degree in economics from the University of Idaho, received in 1970.

3. I have been a member of the Idaho State Bar since 1973. I am admitted to practice in all state and federal courts in Idaho, in the 9<sup>th</sup> Circuit Court of Appeals and am admitted to practice before the United States Supreme Court.

4. I am a Fellow of the American College of Trial Lawyers and have served as the Chairman of the Idaho Fellows of the American College of Trial Lawyers. I am a member of the International Association of Defense Counsel and have served in various committee capacities with that organization, all relating to civil litigation, insurance defense litigation, and commercial and business litigation. I am a member of the Idaho Trial Lawyers Association. I am a member of the litigation section of the Idaho State Bar, although I have not been active in that section.

5. Since 1975, my law practice has focused almost exclusively on numerous areas of civil litigation. I have prosecuted and defended cases in the areas of auto and truck liability, products liability, personal injury defense, personal injury plaintiff's cases, trade secret litigation, defense of claims involving alleged breach of contract, employment agreements and employment and confidentiality agreements and covenants not to compete or agreements of nonsolicitation. I have defended and prosecuted civil cases involving allegations of misappropriation of trade secrets, tortious interference with contract or economic advantage, ERISA law violations, and professional liability defense other than medical malpractice defense.

6. Since 1975, I have prosecuted and defended cases filed in every county in the State of Idaho and have taken cases to verdict in most of the courts in this state. I have tried to verdict approximately 100 civil cases and one felony criminal case.

7. In the course of my practice, I have pursued and defended against claims for awards of attorney fees and costs, and have become familiar with what could be regarded as the prevailing rates for professional fees charged by attorneys in various areas of civil litigation, including breach of contract, commercial transactions, trade secret cases, employment contract cases and covenants not to compete.

8. On Saturday, February 7, 2015, I was asked by Gary Cooper, defense counsel for Sage Silicon Solutions, LLC, et al., in this case if I would be willing to review certain pleadings and information regarding the case relating to Plaintiff American Semiconductor, Inc.'s request for an award of attorney fees and potentially be able to submit an affidavit relating to my opinions concerning the prevailing rates for attorney fees in a case such as this case presently before the Court on certain post-trial motions. I agreed to do so.

9. On Monday, February 9, 2015, prior to reviewing any information or pleadings concerning this case, I executed an Expert or Consultant's Acknowledgment of Protective Order,

and returned the same to Mr. Cooper on that date. Thereafter, I reviewed the following documents and pleadings:

- a) Plaintiff's Second Amended Complaint and Demand for Jury Trial;
- b) Defendants Sage Silicon Solutions, LLC, et al.'s Memorandum in Support of Motion for Summary Judgment;
- c) Plaintiff American Semiconductor, Inc.'s Motion for Voluntary Dismissal of Its Claims for Misappropriation of Trade Secrets, Improper Appropriation of Name, Consumer Protection Act, and Injunctive Relief;
- d) Memorandum in Support of Plaintiff American Semiconductor, Inc.'s Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages;
- e) Defendants Sage Silicon Solutions, LLC, et al.'s Opposition to Plaintiff's Motion to Amend to Add Prayer for Punitive Damages;
- f) Defendants Sage Silicon Solutions, LLC, et al.'s Verified Answer to Amended Complaint and Counterclaims;
- g) Special Verdict of the Jury dated January 16, 2015;
- h) Judgment entered in this case; and
- i) Affidavit of John N. Zarian in Support of American Semiconductor, Inc.'s Motion for Attorney Fees and Costs Against the Sage Defendants, and Exhibits 1 through 39 attached to said Affidavit.

10. I have not provided copies of the above-referenced documents to any other person in my law firm other than providing the Expert or Consultant's Acknowledgment of the Protective Order to my secretary, Patsy L. Buker, and the contents of this Affidavit which I have dictated and which has been prepared by my secretary. All documents and pleadings identified above have been retained by me only on my computer and will not be copied or retained

following completion of the review requested by Mr. Cooper. All documents referenced above will be destroyed.

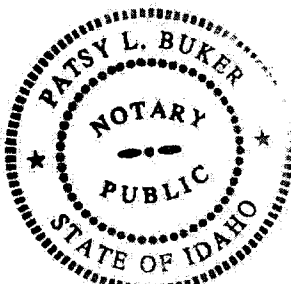
11. Based upon my knowledge and experience with similar cases and the legal and factual issues originally pled and as framed by the Second Amended Complaint, and the legal and factual issues that were ultimately tried to verdict in this case, in my opinion, the prevailing attorney fee rates for a partner, associates and paralegals pursuing the case on behalf of a plaintiff seeking the relief and damages as have been sought in this case, are as follows:

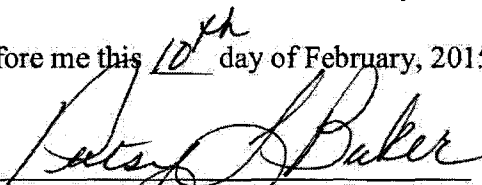
- a) Partner with similar experience to John N. Zarian - \$250 per hour;
- b) An associate with similar experience to Kennedy Luvai - \$190 per hour (I note Mr. Luvai was apparently made a shareholder of the Parsons Behle law firm on or about January 1, 2015);
- c) An associate with similar experience to Sarah Arnett - \$195 per hour;
- d) An associated with similar experience to Jeffrey Sanchez - \$160 per hour (I note Mr. Sanchez apparently is no longer an associate with the Parsons Behle law firm);
- e) The legal assistants identified in the Affidavit of John N. Zarian, given their level of experience and activities they pursued during the case - \$100 to \$105 per hour.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
DONALD J. FARLEY

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of February, 2015.



  
Notary Public for Idaho  
Residing at Boise, ID  
My Commission Expires: 5/6/16



**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702

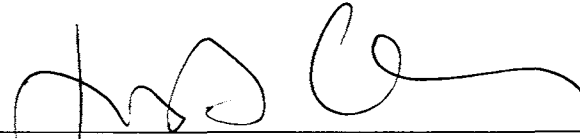
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\_\_\_\_\_  
GARY L. COOPER

FEB 13 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
 )  
Plaintiff, )  
 )

CASE NO. CV-OC-1123344

vs. )  
 )

SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, WILLIAM TIFFANY )  
and Defendants DOES I - X, )  
 )  
 )  
Defendants. )  
 )

**SAGE DEFENDANTS MEMORANDUM  
IN OPPOSITION TO ASI'S REQUEST  
FOR COSTS AND ATTORNEY FEES**

RELATED COUNTER ACTIONS )  
 )  
 )

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## INTRODUCTION

COME NOW the Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany, by and through their attorneys of record, and request that this Court deny ASI's request for costs and attorney fees. The Defendants Roberts, Yearsley and Tiffany request that this Court deny ASI's request because ASI is not the prevailing party in this action. The Special Verdict filed on January 16, 2015 shows that the jury did not award ASI any damages for the breach of the Employee Confidentiality Agreement ("ECA") or for breach of fiduciary duty. When the entirety of the litigation is considered, the Sage Defendants are the prevailing parties in this matter and ASI's request for costs and attorney fees should be denied because ASI did not prevail on any of the key issues in this case.

**I. Based on the ECA and Idaho law costs and attorney fees are to be awarded to the prevailing party.**

It is clear in Idaho that "[a]ttorney fees may be awarded if authorized by **statute** or **contract**." *Hellar v. Cenarrusa*, 106 Idaho 571, 578, 682 P.2d 524, 531 (1984) (emphasis added).

Roberts, Yearsley and Tiffany each signed an Employee Confidentiality Agreement ("ECA") when they became employees of ASI. Each ECA contains an identical paragraph 13 that provides in relevant part:

**13. Miscellaneous.** This Agreement will be governed by the local laws of the State of Idaho. The parties hereby consent to the jurisdiction of the state and federal courts sitting in Ada County, Idaho for all matters and actions arising under this agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such litigation.

Trial Exhibits 4, 13 and 14. Thus, the ECA provides that a party that prevails on any action arising under the terms of the ECA is entitled to recover reasonable attorney fees and costs that are incurred

in connection with that action. The recoverable attorney fees and costs are not limited by the provisions of IRCP (d) and (e). *Zenner v. Holcomb*, 147 Idaho 444, 210 P.3d 552 (2009) Thus, actual attorney fees and costs incurred can be recovered under the contract provisions of the ECA.

The prevailing party is also entitled to recover attorney fees under I.C. § 12-120(3) because “[a]ctions brought for breach of an employment contract are considered commercial transactions, subject to the attorney fee provisions of I.C. § 12-120(3).” *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 415, 179 P.3d 1064, 1071 (2008). The gravamen of ASI’s case against Roberts, Yearsley and Tiffany was the breach of the ECA, an employment agreement. Attorney fees are limited to those that are determined to be “reasonable” under IRCP 54 and costs are limited to those recoverable as a matter of right pursuant to IRCP 54(d)(1), unless “exceptional” circumstances are shown.

## **II. ASI is not a prevailing party.**

### **A. Liability**

The first matter to be addressed is an internal inconsistency in ASI’s argumentation. ASI argues that it is the prevailing party on all claims that were tried because it prevailed on the issue of liability. Later, ASI argues that it prevailed on the counterclaims as well. However, ASI could not be the prevailing party on the claims for breach of the ECA or breach of fiduciary duty because no damages were awarded. Causation and damages are essential elements of breach of contract and breach of fiduciary duty claims. *Mosell Equities, LLC v. Berryhill & Co.*, 154 Idaho 269, 278, 297 P.3d 232, 241 (2013); *Jordan v. Hunter*, 124 Idaho 899, 907, 865 P.2d 990, 998 (Ct. App. 1993) (Stating that damages is an essential element of a claim for breach of fiduciary duty). ASI’s argument that it is the prevailing party on the breach of the ECA and breach of fiduciary duty claims because

the jury found a breach on both of those claim is not consistent with its argument that it prevailed on the counterclaims. In Question 8 on the Special Verdict, the jury determined that ASI intentionally interfered with Sage's contract with Zilog. ASI cannot argue that it prevailing party because the jury determined there was liability but no damages for breach of contract and breach of fiduciary duty but then also argue that it prevailed on the counterclaim for intentional interference where the jury also found liability but awarded no damages.

ASI next argues that it was necessary for the jury to find a breach of the ECA before it could determine that ASI prevailed on the intentional interference claim against the Sage Defendants because that was essential to determining that the interference was "wrongful by some measure beyond the fact of the interference itself." *Highland Enterprises, Inc. v. Barker*, 133 Idaho 330, 338, 986 P.2d 996, 1004 (1999). This can not be the basis for the jury's decision. First, the two claims are completely separate torts with distinct elements. Second, Sage Silicon Solutions, LLC did not sign an ECA and was not found to have breached a contract with ASI. Thus, breach of the ECA could not have been the basis for finding Sage liable for intentional interference. Finally, ASI's argument is not consistent with the testimony elicited by ASI at trial. ASI elicited testimony from Doug Hackler that the duty to direct Zilog design work to ASI arose in June 2009, more than six months before anyone could have signed an ECA and was tied to a consulting agreement between David Roberts and ASI. The "wrongful by some measure" element was argued to be satisfied because the Sage Defendants knew that ASI was interested in acquiring outsourced design work from ASI and the Sage Defendants took the work instead of directing it to ASI. There was no need to find breach of contract in order to determine that the Sage Defendants tortiously interfered with ASI's economic expectancy with Zilog.

**B. ASI did not prevail on the Issues of Causation and Damages.**

ASI argues that it prevailed on the issues of causation and damages on all of its claims against the Sage Defendants. This argument ignores the history of this case and the Special Verdict which was returned by the jury. First, it fails to consider the claims that were dismissed by summary judgment. It does not consider the trade secret claim that ASI had to dismiss after failing to meet a discovery deadline imposed by the Court. More importantly, it does not consider the Special Verdict. The jury did not find causation or damages for either the breach of ECA or breach of fiduciary duty claims. In response to Question 3 on the Special Verdict, the jury awarded zero dollars for these two claims. The Court polled the jury after the verdict was returned and eleven of the twelve jurors orally affirmed that they supported the award of "0" (zero) for those two claims. This Court specifically noted before polling the jury that the amount of "195,175" had been written in on Question 3, but was crossed out with the signature of the foreperson above it, and "0" was inserted.. Transcript, 1/16/15, p. 84. The jury, during polling, affirmed this as their verdict.

ASI now argues that the jury "intended to award ASI damages for the individual defendants' breaches of their contractual and fiduciary duties not to compete." ASI Supporting Memo, pp. 6-7. ASI speculates that the only reason the jury wrote a zero on question 3 of the Special Verdict was based on Jury Instruction No. 28 that prevented double recover for the same conduct. ASI has produced no admissible evidence to support its rank speculation. This issue is the subject of two additional motions filed by ASI, by which ASI seeks to impermissibly question some or all of the jurors to inquire into their mental processes. The arguments contained in the Sage Defendants' oppositions to those motions are incorporated herein. However, for purposes of a "prevailing party"

analysis, neither the Court nor counsel should speculate about why or how the jury arrived at its verdict. The simply truth is that the jury found a breach but no damages on breach of contract and breach of fiduciary duty. Roberts, Yearsley and Tiffany prevailed on those claims.

Even though the jury found that Roberts, Yearsley, Tiffany and Sage interfered with ASI's prospective economic expectancy and awarded \$195,175, the Sage Defendants prevailed on that claim as well. The key damage issue which was litigated involved whether tool costs should be considered when measuring damages. ASI requested relief in the amount of \$1,025,087 on the claims for breach of contract, breach of fiduciary duty, and tortious interference with a prospective economic advantage. The uncontradicted testimony at trial was that this damage calculation included more than \$800,000 in tool costs. ASI was awarded \$195,175 for the tortious interference claim or 19% of what it was seeking in damages. The amount that was awarded was \$829,912 less than what ASI claimed it was owed and could not have included the \$800,000 in tool costs. The Sage Defendants prevailed on the key issue of whether tool costs should be considered in the damages calculation.

Finally, the Sage Defendants served an Offer of Judgment in the amount of \$100,000 on December 12, 2014. Zilog has also submitted documents that demonstrate that Zilog filed an offer of judgment in the amount of \$205,000 before trial. Thus, ASI could have walked away with \$305,000 without incurring the expense of trial. Instead, ASI chose to go to trial and was awarded \$109,825 less than the combined offer by the Defendants before trial. The Sage Defendants benefitted from going to trial because they only have to pay the verdict of \$195,175 instead of the \$1,025,087 that ASI claimed. Thus, ASI lost \$109,825 by going to trial while the Sage Defendants

saved \$829,912 by going to trial. ASI is not the prevailing party – the Sage Defendants are the prevailing party.

**C. ASI is not the prevailing party when the entire litigation is considered.**

When taking an overall view of the case, ASI is not the prevailing party on any claims alleged in the Second Amended Complaint or raised by subsequent motion:

CLAIMS	PREVAILING PARTY
1. Breach of various provisions of the ECA	Sage Defendants
2. Breach of Fiduciary Duty	Sage Defendants
3. Breach of Implied Covenant of Good Faith and Fair Dealing	Sage Defendants
4. Tortious Interference with Prospective Economic Advantage	Sage Defendants
5. Tortious Interference with Contract	Sage Defendants
6. Violation of the Idaho Trade Secret Act	Sage Defendants
7. Appropriation of ASI's name	Sage Defendants
8. Unjust Enrichment	Sage Defendants
9. Consumer Protection Act Violation	Sage Defendants
10. Declaratory Relief	Sage Defendants
11. Injunctive Relief	Sage Defendants
12. Claim for punitive damages	Sage Defendants

Of the twelve claims alleged against the Sage Defendants only three were presented to the jury. The other claims were dismissed<sup>1</sup> or did not survive summary judgment and directed verdict

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<sup>1</sup> The Trade Secret Act claim was pursued by ASI until it failed to comply with an order from the Court requiring ASI to adequately disclose the trade secret it was claiming was used by the individuals. ASI then represented that it would dismiss the trade secret claim but waited an additional two weeks to do so. ASI's conduct regarding the trade secret claim is part of Zilog's motion for costs and attorney fees that was joined by the Sage Defendants.



motions. ASI requested relief in the amount of \$1,025,087 on the remaining claims for breach of contract, breach of fiduciary duty, and tortious interference with a prospective economic advantage that were decided by the jury. ASI did not prevail on the breach of contract or breach of fiduciary duty as the jury awarded no damages for those claims. ASI was awarded \$195,175 for the tortious interference claim, which did not include the tool costs that ASI claimed was the most substantial cost in calculating damages. Thus, the Sage Defendants prevailed on the key issue in calculating damages. ASI only prevailed on the counterclaims because no damages were awarded. ASI is not the prevailing party when considering the entirety of the litigation.

**III. Reasonable Attorney fees can be awarded to the prevailing party pursuant to the terms of the ECA and 12-120(3), but ASI is not the prevailing party.**

The Sage Defendants agree that reasonable costs and attorney fees can be awarded to the prevailing party based on the terms of the ECA. The ECA provides for recovery of all reasonable costs and attorney fees. In the alternative, attorney fees should be awarded under I.C. § 12-120(3) because an employment contract is central to the issues tried in this case. Similarly, costs as a matter of right should be awarded under IRCP 54 if they are not awarded pursuant to the ECA.

However, ASI is not the prevailing party and is not entitled to recover costs and fees under ECA or the relevant rules or statutes. ASI's argument that its "tort claims were alternatives to the breach of contract claims as basis for recovering its lost profits" from the Sage Defendants is not supported by the facts of the case or the testimony ASI elicited at trial. ASI's Supporting Memo, p. 15. As stated above, the breach of the ECA could not have been the basis for finding liability under the intentional interference claim because Sage did not have a contractual relationship with ASI. Thus, finding Sage liable for intentional interference could not have been based on the ECA. As

well, the testimony elicited from Doug Hackler was that the Sage Defendants' obligation to direct outsourced design work from Zilog to ASI arose in June 2009 before the ECA's were signed. Hackler linked that obligation with an independent consulting agreement signed by Roberts. Hackler then testified that the obligation was ongoing because of e-mail communication among ASI management that ASI was still interested in outsourced design opportunities with Zilog.

The jury did not award damages for the breach of contract claim. To prevail on a breach of contract claim a plaintiff must establish the following four elements: (1) the existence of a contract, (2) a breach of that contract, (3) the breach caused damages, and (4) the amount of the damages. *Mosell Equities, LLC v. Berryhill & Co.*, 154 Idaho 269, 278, 297 P.3d 232, 241 (2013). The only breach of contract claim that was presented to the jury was the claim for breach of paragraph 7. The jury found that Roberts, Yearsley and Tiffany did breach that paragraph of the ECA but awarded no damages as a result of the breach. Thus, ASI did not establish elements three (breach caused damages) and four (amount of damages) of a breach of contract claim and did not prevail. The Idaho Supreme Court has consistently held that a trial court cannot grant a judgment on only one element of a claim. *Mosell Equities, LLC*, 154 Idaho at 274, 297 P.3d at 237. The jury did not determine that the breach of the ECA caused any damages. Thus, judgment on that claim could not be entered in ASI's favor and ASI did not prevail on the breach of contract claim.

#### **IV. ASI's requested attorney fees are not reasonable.**

ASI is requesting attorney fees based on hourly rates that do not reflect rates that commensurate with the skill and experience of similar attorneys in the area. The hourly rates charged by ASI are significantly higher than the rates charged by counsel for the Sage Defendants and Zilog.

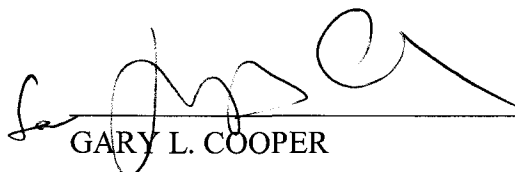
Don Farley, one of the most experienced and respected attorneys in Ada County, has submitted an Affidavit in which he opines that the fee rates claimed by the ASI attorneys significantly exceed the reasonable charges for similar services in Idaho and Ada County specifically. If it is determined that ASI is entitled to an award of attorney fees, the award should be based on rates that are more reasonable.

### CONCLUSION

The ECA provides that the prevailing party is entitled to recover reasonable costs and attorney fees. In the alternative, costs and fees should be granted to the prevailing party pursuant to IRCP 54 and IC §12-120(3). However, ASI did not prevail on the breach of contract claim and is not entitled to recover any costs or fees based on the ECA. Furthermore, when the entirety of the litigation is considered, it is clear that ASI lost money by proceeding with trial because ASI was only awarded \$195,175 in damages when there was \$305,000 in money being offered by the Sage Defendants and Zilog prior to trial. The Sage Defendants actually saved money by proceeding to trial because the Sage Defendants prevailed on the pivotal issue associated with damages. The Sage Defendants did not have to pay for tool costs because they litigated that matter and tool costs were not considered when calculating damages. ASI is not the prevailing party and ASI's request for costs and attorney fees should be denied.

DATED this 12<sup>th</sup> day of February, 2015.

COOPER & LARSEN

  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
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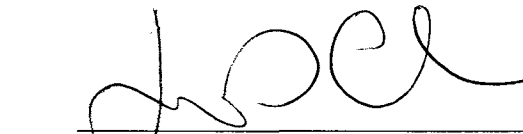
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GARY L. COOPER

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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**SAGE DEFENDANTS MEMORANDUM  
IN OPPOSITION TO ASI'S MOTION  
FOR LEAVE TO CONTACT JURORS**

RELATED COUNTER ACTIONS

## INTRODUCTION

COME NOW the Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany, by and through their attorneys of record, and oppose American Semiconductor, Inc.'s ("ASI") Motion for Leave to Contact Jurors. The Sage Defendants request that this Court deny ASI's motion because ASI is seeking to admit evidence from jurors in violation of IRE 606(b) in order to change the Special Verdict.

On January 16, 2015 the jury returned the Special Verdict. Although finding that Roberts, Yearsley and Tiffany breached their ECA and breached the fiduciary duty of loyalty, the jury awarded zero dollars for these two claims. ASI recognizes that the combined answers to Questions 1 - 3 of the Special Verdict could result in a finding that ASI was not the prevailing party in its breach of contract claim and on the commercial transaction which formed the gravaman of the claims against Roberts, Yearsley and Tiffany. The issue was glaringly apparent upon the reading of the Special Verdict. Nine jurors agreed on Question One, ten jurors agreed on Question Two and eleven jurors agreed on Question Three. The Court polled the jury after the verdict was returned and eleven of the jurors orally and specifically affirmed that they supported the award of "0" (zero) damages in response to Question Three.

The Court specifically noted before polling the jury that the amount of "195,175" had been written in on question three, was crossed out with the signature of the foreperson above it, and that "0" had been written in the space provided. Transcript, 1/16/15, p. 84. No juror stated that this was an error or that the jury intended to award damages for those claims. The jurors knew that a correction could be made because a juror raised an issue related to another question and a correction was made correcting the number of jurors that affirmed the answer to one of the other questions on

the Special Verdict. After polling the jurors the Court asked, "Would Counsel have further questions of the jurors by the Court?" Transcript, 1/16/15, p. 97-98. None of the parties proposed any further inquiries or sought clarification of the verdict at that time. Specifically, ASI's attorneys sat mute and requested no further inquiry by the Court. The jury was then dismissed.

Immediately after the jury was dismissed, ASI's lawyers approached the foreperson of the jury and inquired why "195,175" had been written in response to Question Three, then lined through and "0" substituted. The proper procedure would have been to bring this issue to the Court's attention before the jury was dismissed, explain the significance of it and allow the Court and counsel collectively to determine how to address the issue. The jury could have been questioned with carefully crafted questions or by returning the jury to the jury room to deliberate and answer an additional written question to clarify this issue.

However, rather than have the issue vetted in open court where all concerned parties and the Court could weigh in on resolution of the issue, ASI's lawyers propose to contact the jurors and clarify the jury's intentions. In apparent recognition that this is really an inquiry into the mental processes of the jury, an inquiry that is specifically prohibited by IRE 606(b), ASI's lawyers attempt to hide the true purpose of their jury inquiry by suggesting that they are simply trying to determine if the jury received any "additional guidance" during the deliberations and whether the \$195,175 that was crossed out under question three was crossed out by chance. These stated reasons are merely pretext in order to contact the jury for the purpose of obtaining juror affidavits that would support their argument that the Court should alter the Special Verdict to show or interpret the Special Verdict to mean that the jury really intended to award of damages for the breach of contract claim. Despite the pretext, ASI's lawyers reveal their true purpose by stating: "ASI respectfully request leave from

the Court to contact Ms. Barlow regarding the narrow topic of clarifying what the jury actually found in regards to the amount of damages ASI sustained as a result of the individual defendants' breaches of the Employee Confidentiality Agreement." Motion, p. 5.

Allowing unsupervised post-discharge contact with jurors to determine how or why they reached the verdict they did is a slippery slope. Before the adoption of IRE 606(b) in 1985, submission of juror affidavits in support of post-trial motions was not the norm, but it was seen with some frequency. Frequently, the affidavits dealt with a juror's misunderstanding of certain instructions on the effect of their verdict. There was no bright line rule of guidance from the Idaho Supreme Court as to what was permissible and what was not. IRE 606(b) established a bright line rule and the frequency with which juror affidavits were submitted in support of post-trial motions diminished significantly. And for good reason. A jury verdict is the result of group dynamics and consensus building, not the result of one individual's decision making process. Individually, jurors are likely to have reached the same decision as that of their counter-parts, but in different ways – some with conviction about the answer, some for the wrong reasons, some to be in the majority, some to be in the minority, some with confusion, etc. That does not invalidate the verdict even though it might show the frailty of the process. The point is that even if every one of the twelve jurors submitted affidavits about why they answered Question 1, Question 2 or Question 3 the way they did, it would not likely reveal how a consensus was reached during deliberations. That is the reason IRE 606(b) prohibits such inquiries. Jury trials are already under attack in the United States. Although trite, it is true that the jury system is not perfect, but it is the best vehicle we have to resolve civil disputes. It would be a mistake, with far reaching consequences, to allow ASI to make the inquiries of the jurors it is proposing, especially since it had that opportunity before the jury was



released and did not exercise it. ASI's only purpose is to try to persuade this Court to substitute its judgment for that of the jury. If we as trial lawyers permit that to happen, it will take us one step closer to eliminating jury trials.

**I. IRE 606(b) does not allow a juror to testify regarding any matter occurring during deliberations regarding the validity of the verdict.**

Idaho Rule of Evidence 606(b) states:

**(b) Inquiry to Validity of Verdict or Indictment.** Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes, but a juror may testify on the questions whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror and may be questioned about or may execute an affidavit on the issue of whether or not the jury determined any issue by resort to chance.

Thus, juror testimony and affidavits regarding "any matter" associated with deliberations are inadmissible to call into question the validity of a verdict. As the Idaho Court of Appeals has stated:

...I.R.E. 606(b) allows intrusion into the jury's deliberative process for only three types of specific types of juror misconduct: "extraneous prejudicial information" improperly brought to the jury's attention, "outside influence" brought to bear upon a juror, or determination of any issue "by resort to chance."

*State v. Setzer*, 136 Idaho 477, 479, 36 P.3d 829, 831 (Ct. App. 2001). The Idaho Supreme Court has stated that these areas are "the only matters jurors may testify to." *Levinger v. Mercy Med. Ctr., Nampa*, 139 Idaho 192, 197, 75 P.3d 1202, 1207 (2003). There is no exception to IRE 606(b) in Idaho that allows for clarification, explanation or correction of a verdict. This is a hard a fast rule that applies even if a juror would testify that jury considered the fact that a criminal defendant did not testify in finding him guilty and where other Constitutional rights are at issue. *State v. DeGrat*,

128 Idaho 352, 355, 913 P.2d 568, 571 (1996) (Determining that IRE 606(b) barred juror affidavits even where issues that a defendant's 5<sup>th</sup> and 6<sup>th</sup> Amendment rights may have been violated by juror conduct were raised in the juror affidavits). As well, a "juror's alleged statement regarding the rationale behind the jury's verdict" is inadmissible under IRE 606(b). *State v. Webster*, 123 Idaho 233, 236, 846 P.2d 235, 238 (Ct. App. 1993). The Rule bars jurors from offering evidence in any form regarding any juror's mental processes. *Reynolds v. State*, 126 Idaho 24, 27, 878 P.2d 198, 201 (Ct. App. 1994) (quoting *Roll v. City of Middleton*, 115 Idaho 833, 837, 771 P.2d 54, 58 (Ct. App. 1989)).

**II. Case law decided after the adoption of IRE 606(b) does not allow juror affidavits to be admitted to clarify, explain, or confirm a verdict because that would require inquiry into the internal deliberative process of the jury which is prohibited by the Rule.**

ASI relies on case law that predates the adoption of IRE 606(b) for the proposition that juror affidavits can be obtained to explain, confirm, or clarify a verdict. Rule 606(b) was adopted in 1985. ASI relies on *Umphrey v. Sprinkel*, 106 Idaho 700 (1983) and *Glennon v. Fisher*, 51 Idaho 732 (1932). These cases are inconsistent with IRE 606(b) and the case law that followed the adoption of the Rule. For example, in *Lehmkuhl*, which was decided in 1988 after the 1985 adoption of IRE 606(b), the Court of Appeals held that a juror affidavit that was offered to explain the verdict and the juror's intent was not admissible because it was an attempt to impeach the verdict. *Lehmkuhl v. Bolland*, 114 Idaho 503, 508, 757 P.2d 1222, 1227 (Ct. App. 1988). In that case, plaintiffs sought to admit a juror affidavit that explained the juror's understanding of the Court's instructions and why the percentages of negligence were made equal. *Id.* The Court of Appeals determined that offering the affidavit to clarify the juror's thought process and explain the verdict was impermissible under IRE 606(b). The Court went on to hold:

The federal rule, as with Idaho's, presents this line between an allowed inquiry into extraneous prejudicial information and **a prohibited inquiry into the thought processes of the jurors**. The application of the rule has prevented challenges to verdicts including misapprehension of the evidence or impressions as to the effect of findings; that a juror ignored or misunderstood the law; what theory or ground upon which a verdict is rendered; that the jury agreed with or believed in the verdict.

As noted, the Lehmkuhls offered the juror affidavits in an attempt to demonstrate that the jury reached its decision based upon the belief that a verdict against Bolland would force him to personally pay for any damages. The affidavits alleged that this belief arose from the court's instructions that no insurance was involved or to be considered. The operation of 606(b) excludes the use of the affidavits as presented by the Lehmkuhls, an attempt to impeach the verdict by a juror's testimony concerning his misunderstanding of the instructions issued to the jury.

*Id.* at 509, 757 P.2d at 1228 (emphasis added) (internal citations omitted).

ASI is attempting to obtain juror affidavits for the same impermissible purposes as the Lehmkuhls. ASI seeks affidavits to explain the thought processes of the jurors in hopes that it will support ASI's argument that the award of no damages in response to Question 3 was really an award of damages which was crossed out and reduced to zero because of the instruction prohibiting a double recovery. This is the very inquiry and type of evidence that Rule 606(b) prohibits. The Court of Appeals in *Lehmkuhl* concluded:

The affidavits presented by the Lehmkuhls were clearly an inquiry into an area prohibited from review by I.R.E. 606(b). **A review of the internal deliberative processes of the jury is prohibited under the rule** unless affected by extraneous prejudicial information or an outside influence.

*Id.* at 510, 757 P.2d at 1229 (emphasis added). ASI has offered no valid reason for seeking the juror affidavits and is quite clear that its sole purpose is to have the jurors explain their deliberative process. ASI should not be allowed to make such an impermissible inquiry.

The Court of Appeals rejected another attempt to alter the verdict of the jury with juror affidavits in *Andrews v. Idaho Forest Industries, Inc.*, 117 Idaho 195, 786 P.2d 586 (Ct. App. 1988).

In *Andrews*, the plaintiff attempted to show that the jury was misled by the jury instructions by submitting juror affidavits. *Id.* at 197-98, 786 P.2d at 588-89. The district court refused to consider the affidavits because they violated Rule 606(b). The plaintiff attempted a play on words by arguing that the jury instructions were “extraneous information” that was improperly considered by the jury. Just as this Court should reject ASI’s play on the words “outside influence” and “chance” the Court of Appeals easily rejected the notion that jury instructions were extraneous information. *Id.* The district court’s refusal to consider the juror affidavits was upheld because they were nothing more than inquiries into the internal deliberation process of the jury which is prohibited. *Id.* In this case, ASI is seeking juror affidavits to explain how the jury applied a specific jury instruction. The statement by Ms. Barlow that ASI hopes to submit through an affidavit is that the jury did not award damages because of the double recovery instruction. Motion, p. 3. Although one must question how one juror, even the foreperson, can explain the reasoning of every other juror, it is no secret that ASI wants to obtain a juror affidavit to explain how the jury applied a jury instruction. This impermissibly requires inquiry into the deliberative process of the jury.

ASI attempts to circumvent the stringent requirements of Rule 606(b) by arguing that it is not seeking to inquire into the “validity” of the verdict but merely to “confirm the accuracy of the verdict.” Motion, p. 6. However, there is no exception under Rule 606(b) to confirm the accuracy of a verdict. Furthermore, ASI is playing with semantics and has not shown that there is a valid exception to Rule 606(b) in Idaho that allows the admission of juror affidavits to confirm the accuracy of a verdict, especially where the intent is to change the verdict as ASI is attempting to do in this case.

**III. ASI had the opportunity to have the Court inquire further of the jury when the jury was polled but did not inquire at that time and is now prohibited from doing so.**

After the verdict was returned, the Court read the verdict out loud and then polled the jury. The Court specifically noted before polling the jury that the amount of "195,175" had been written in on question three, was crossed out with the signature of the foreperson above it, and that "0" had been written in the space provided. Transcript, 1/16/15, p. 84. No juror stated that this was an error or that the jury intended to award damages for the breach of contract claim. The jurors knew that a correction could be made because a juror raised an unrelated issue and a correction was made to the Special Verdict to properly reflect the vote of one of the jurors to one of the questions. After polling the jurors the Court asked, "Would Counsel have further questions of the jurors by the Court?" Transcript, 1/16/15, p. 97-98. None of the parties proposed any further inquiries or sought clarification of the verdict at that time. ASI's lawyers sought no further clarification although they must have recognized the significance of the jury's response to Question No. 3 because shortly after the jury was dismissed, ASI's lawyers questioned the foreperson about why the jury answered Question 3 as it did.

ASI never objected to the Special Verdict form. The Idaho Supreme Court has held that a failure to object to the form of a verdict at the time it is submitted to the jury or when it is returned to the court constitutes a waiver of a right to do so. *Barlow v. Int'l Harvester Co.*, 95 Idaho 881, 890, 522 P.2d 1102, 1111 (1974). Similarly, in *Pacheco v. Safeco Ins. Co. of Am.*, 166 Idaho 794, 780 P.2d 116 (1989), the Idaho Supreme Court held that a complaining party waived the right to claim juror misconduct when the party or counsel knew of the conduct before the verdict was returned but remained silent. This case does not involve any evidence of juror misconduct. However, ASI knew that the jury had crossed out the "195,175" under Question 3 of the Special Verdict and replaced it

with a zero. ASI was presented with an opportunity to have the Court make further inquiry of the jury regarding the Special Verdict, but declined to seek any type of clarification on the record. Thus, the right to claim that the verdict is somehow "invalid" because the "195,175" was crossed out and "0" inserted should be considered waived and ASI should be estopped from raising this issue now.

**IV. Contrary to ASI's assertion, Federal case law does NOT allow juror affidavits to clarify or explain jury verdicts.**

ASI represents that the "United States Court of Appeals recognize that F.R.E. 606(b) does not prohibit juror affidavits to clarify or explain what the jury actually found in the jury room." Motion, pp. 6-7. First, Idaho law is sufficient to address this issue and there is no need to resort to federal law or the law of other jurisdictions. However, if resort is made to federal law, one must first understand that FRE 606(b) contains *different exceptions* to the rule than does Idaho law. The Federal rule states:

**(b) During an Inquiry Into the Validity of a Verdict or Indictment.**

**(1) Prohibited Testimony or Other Evidence.** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

**(2) Exceptions.** A juror may testify about whether:

**(A)** extraneous prejudicial information was improperly brought to the jury's attention;

**(B)** an outside influence was improperly brought to bear on any juror; or

**(C)** a mistake was made in entering the verdict on the verdict form.

FRE 606(b). The Federal rule contains an additional exception for mistakes made in entering the verdict on the verdict form. However, it also does not contain the exception for verdicts reached by

chance. Thus, there are substantial difference between the Idaho and Federal rule that ASI does not account for or explain.

ASI does reference the advisory note to the Federal rule. However, ASI failed to include the note made after the 2006 amendment which is directly on point. The 2006 note states:

In adopting the exception for proof of mistakes in entering the verdict on the verdict form, **the amendment specifically rejects the broader exception, adopted by some courts, permitting the use of juror testimony to prove that the jurors were operating under a misunderstanding about the consequences of the result that they agreed upon.** *See, e.g., Attridge v. Cencorp Div. of Dover Techs. Int'l, Inc.*, 836 F.2d 113, 116 (2d Cir. 1987); *Eastridge Development Co., v. Halpert Associates, Inc.*, 853 F.2d 772 (10<sup>th</sup> Cir. 1988). **The broader exception is rejected because an inquiry into whether the jury misunderstood or misapplied an instruction goes to the jurors' mental processes underlying the verdict, rather than the verdict's accuracy in capturing what the jurors had agreed upon.** *See, e.g., Karl v. Burlington Northern R.R.*, 880 F.2d 68, 74 (8<sup>th</sup> Cir. 1989) (error to receive juror testimony on whether verdict was the result of jurors' misunderstanding of instructions: "The jurors did not state that the figure written by the foreman was different from that which they agreed upon, but indicated that the figure the foreman wrote down was intended to be a net figure, not a gross figure. **Receiving such statements violates Rule 606(b) because the testimony relates to how the jury interpreted the court's instructions, and concerns the jurors' 'mental processes,' which is forbidden by the rule.**"); *Robles v. Exxon Corp.*, 862 F.2d 1201, 1208 (5<sup>th</sup> Cir. 1989) ("the alleged error here goes to the substance of what the jury was asked to decide, necessarily implicating the jury's mental processes insofar as it questions the jury's understanding of the court's instructions and application of those instructions to the facts of the case"). Thus, the exception established by the amendment is limited to cases such as "where the jury foreperson wrote down, in response to an interrogatory, a number different from that agreed upon by the jury, or mistakenly stated that the defendant was 'guilty' when the jury had actually agreed that the defendant was not guilty." *Id.*

It should be noted that the possibility of errors in the verdict form will be reduced substantially by polling the jury. Rule 606(b) does not, of course, prevent this precaution. *See* 8C. Wigmore, *Evidence*, § 2350 at 691 (McNaughten ed. 1961) (noting that the reasons for the rule barring juror testimony, "namely, the dangers of uncertainty and of tampering with the jurors to procure testimony, disappear in large part if such investigation as may be desired is *made by the judge* and takes place *before the jurors' discharge* and separation") (emphasis in original). Errors that come to light after polling the jury "may be corrected on the spot, or the jury may be sent out to continue deliberations, or, if necessary, a new trial may be ordered." C.

Mueller & L. Kirkpatrick, *Evidence Under the Rules* at 671 (2d ed. 1999) (citing *Sincox v. United States*, 571 F.2d 876, 878-79 (5<sup>th</sup> Cir. 1978)).

FRE 606, 2006 Amendments (emphasis added). The Federal rule specifically rejects broad exceptions for allowing juror affidavits to explain a juror's misunderstanding of jury instructions or the consequence of a result that was agreed upon. This is the very purpose for which ASI is now seeking to contact jurors. Contrary to ASI's assertion, this line of inquiry is not permitted by the Federal rule. Furthermore, the note to the Federal rule suggests such issues be addressed by polling the jury. The practice was followed by the Court and ASI did not make any further inquiry into this matter even though the Court provided ASI with that opportunity.

ASI cites a string of Federal cases and then concludes, "The weight of authority supports a finding that I.R.E. 606(b) does not prohibit use of juror affidavits in this fashion, to clarify the verdict." However, some of the cases that ASI cites rely on the line of authority and the broad exception that the note to the 2006 amendment to FRE 606(b) specifically rejected. Other authority cited stands for the exact opposite of the position that ASI has taken. For example, ASI cites *Karl v. Burlington N. R. Co.*, 880 F.2d 68 (8th Cir. 1989). That case held that a trial court acted properly by sending a jury back into deliberations to address a concern about an inconsistent verdict. *Id.* at 72. However, the trial court erred when it considered juror testimony and affidavits regarding whether the damages awarded represented a net figure or a gross figure. The Court of Appeals held:

The district court's characterization of the error as one of "transmission" rather than one in the verdict itself sheds little illumination on the problem. The verdict in this case was transmitted, as are all verdicts, by words written by the foreman on a piece of paper. The piece of paper truly stated what the jury had agreed to. The affidavits of the jurors do no more than point to their intentions to award a net figure rather than a gross figure, thus demonstrating their misunderstanding of the court's clear instructions. Far from a simple error in transmission or in putting words or figures to paper, it is the jurors' mental processes that gave rise to the concerns at issue.



We conclude that the evidence of the jury's misinterpretation of its instructions is deemed incompetent and inadmissible under Rule 606(b), and should not have been considered by the district court in amending the verdict. This conclusion forecloses any basis for setting aside the verdict and ordering a new trial. As there is no other indication that the jury's first verdict was deficient, the judgment is reversed and remanded to the district court with instructions to reinstate the first verdict.

*Id.* at 75. Similarly, ASI is not asking to clarify an error in transmission of the verdict. In the present matter, the Court polled the jury and each juror affirmed the answers that were given, even after it was emphasized by the Court that in answer to Question 3, the "195,175" had been lined through and a zero was placed in the blank. Here ASI is asking about the intent of the jurors. That type of inquiry was determined to be improper under FRE 606(b) in *Karl*. Thus, the Federal case law cited by ASI does not support ASI's position.

**V. There is no good faith basis for ASI's contention that there may have been outside influence or that the jury reached the verdict by chance.**

Although the stated basis for the motion was to inquire into the "narrow issue of whether the jury received any 'additional guidance' during deliberation and/or whether the reduction of the \$195,175 award in response to Question 3 of the Special Verdict was done by chance," all but one page of ASI's ten page motion is dedicated to arguing for a correction to the Special Verdict to reflect damages for the breach of contract claim. The stated basis for the motion is merely a pretext to be able to obtain and offer evidence in violation of IRE 606(b).

ASI speculates that the jury may have received "additional guidance" or "further guidance" and that this somehow constituted improper outside influence. ASI explains that this "may have been a reference to the Court's double recovery instruction..." Thus, ASI has offered a reasonable explanation for the "additional guidance" statement. It should be noted that the Court informed the parties that the jurors did request additional copies of the jury instructions during the second day of

deliberations. Transcript, 1/16/15, 84-85. The jury also asked for a calculator which was provided. There is no evidence or good faith belief that there was “extraneous **prejudicial** information” or that an outside influence “was improperly brought to bear” upon any of the jurors. ASI should not be allowed to inquire of jurors based on nothing more than rank speculation that arises from ASI’s attempt to elicit inadmissible evidence from jurors.

Similarly, ASI contends that it should be allowed to inquire of the jury to see if they reached the verdict by chance. The sole basis for this belief is that Ms. Barlow, when discussing the case with Mr. Zarian and Mr. Luvai, did not indicate that the “jury engaged in ‘solemn deliberation’ on the issue of which \$195,175 award (Question 3 or Question 5) they should cross out to comply with the jury instructions.” Plaintiff’s Motion to Amend or Clarify the Verdict, p. 9. ASI concludes that the jury must have reached the decision by chance because Ms. Barlow did not explicitly state that the jury reached the decision by “solemn deliberations.” More importantly, Ms. Barlow did not tell Mr. Zarian or Mr. Luvai that the decision was made by a result to chance. Thus, ASI is seeking permission to further inquire of the jury with nothing more than rank speculation about what may have happened.

### **CONCLUSION**

Idaho Rule of Evidence 606(b) and Idaho case law should control in this matter. The Rule and case law do not allow for the contact with jurors that ASI is seeking. ASI cannot seek clarification of the jury’s thought processes and deliberations, including how or why the jury applied a certain jury instruction. If the verdict presented a question which ASI felt needed clarification, the appropriate measure would have been to bring this to the Court’s attention and with the input of all parties and the Court either orally question the jurors about the issue or prepare additional interrogatories and send the jury back into deliberations to clarify the issue. ASI waived that opportunity by not raising

its voice when the Court asked the parties if they had additional questions of the jury. The jury was also polled and affirmed the answers on the Special Verdict as they appear on the Special Verdict. ASI was aware that the jury awarded no damages for the breach of contract claim and that it had struck out a number and then entered zero. Yet, ASI did not ask for any clarification when the jury was still empaneled and something could have been done to resolve the issue. ASI now seeks permission to improperly inquire into the thought processes of the jury, contrary to the specific wording of IRE 606(b). Further, ASI has not demonstrated that there was any improper or prejudicial outside influence operating on the jurors or that any matter was decided by chance. The motion for leave to contact jurors should be denied.

DATED this 12<sup>th</sup> day of February, 2015.

COOPER & LARSEN

  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing to:

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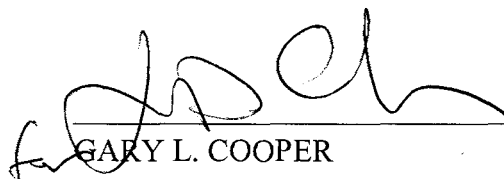
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*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
 )  
Plaintiff, )

CASE NO. CV-OC-1123344

vs. )

SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, WILLIAM TIFFANY )  
and Defendants DOES I - X, )  
 )  
Defendants. )

**SAGE DEFENDANTS MEMORANDUM  
IN OPPOSITION TO ASI'S MOTION  
TO AMEND OR CLARIFY THE  
VERDICT, OR IN THE  
ALTERNATIVE, AMEND THE  
JUDGMENT**

RELATED COUNTER ACTIONS )

24

## INTRODUCTION

COME NOW the Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany, by and through their attorneys of record, and oppose American Semiconductor, Inc.'s ("ASI") Motion to Amend or Clarify the Verdict, or in the Alternative, Amend the Judgment. The Sage Defendants request that this Court deny ASI's motion because IRCP 59(a) does not allow for amending of a verdict and ASI has not stated a proper basis for amending the judgment under the Rule.

On January 16, 2015 the jury returned a Special Verdict finding neither causation nor damages for either the breach of ECA or breach of fiduciary duty claims. In response to Question 3 on the Special Verdict the jury awarded zero dollars for these two claims. The Court specifically noted before polling the jury that the amount of "195,175" had been written in on question three, was crossed out with the signature of the foreperson above it, and that "0" had been written in the space provided. Transcript, 1/16/15, p. 84. The Court polled the jury after the verdict was returned and eleven of the twelve jurors orally affirmed that their answer awarding "0" (zero) for those two claims.

ASI now requests this Court to substitute its judgment for that of the jury and change the Special Verdict form or to amend the judgment. In support of its IRCP 59(a) motion ASI offers inadmissible hearsay statements from the jury foreperson allegedly explaining how the jury arrived at the verdict. Most of ASI's arguments are the same arguments as are contained in the Motion for Leave to Contact Jurors. The Sage Defendants are required to repeat some of the same arguments in order to fully address the issues raised by ASI.

**I. Idaho law does not allow for the clarification or amendment of jury verdicts.**

**A. IRE 606(b) does not allow a juror to testify regarding any matter occurring during deliberations regarding the validity of the verdict.**

Idaho Rule of Evidence 606(b) states:

**(b) Inquiry to Validity of Verdict or Indictment.** Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes, but a juror may testify on the questions whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror and may be questioned about or may execute an affidavit on the issue of whether or not the jury determined any issue by resort to chance.

Thus, juror testimony and affidavits regarding "any matter" associated with deliberations are inadmissible to call into question the validity of a verdict. As the Idaho Court of Appeals has stated:

...I.R.E. 606(b) allows intrusion into the jury's deliberative process for only three types of specific types of juror misconduct: "extraneous prejudicial information" improperly brought to the jury's attention, "outside influence" brought to bear upon a juror, or determination of any issue "by resort to chance."

*State v. Setzer*, 136 Idaho 477, 479, 36 P.3d 829, 831 (Ct. App. 2001). The Idaho Supreme Court has stated that these areas are "the only matters jurors may testify to." *Levinger v. Mercy Med. Ctr.*, *Nampa*, 139 Idaho 192, 197, 75 P.3d 1202, 1207 (2003). There is no exception to IRE 606(b) in Idaho that allows for clarification, explanation or correction of a verdict. This is a hard and fast rule that applies even if a juror would testify that jury considered the fact that a criminal defendant did not testify in finding him guilty and where other Constitutional rights are at issue. *State v. DeGrat*, 128 Idaho 352, 355, 913 P.2d 568, 571 (1996) (Determining that IRE 606(b) barred juror affidavits

even where issues that a defendant's 5<sup>th</sup> and 6<sup>th</sup> Amendment rights may have been violated by juror conduct were raised in the juror affidavits). As well, a "juror's alleged statement regarding the rationale behind the jury's verdict" is inadmissible under IRE 606(b). *State v. Webster*, 123 Idaho 233, 236, 846 P.2d 235, 238 (Ct. App. 1993). The Rule bars jurors from offering evidence in any form regarding any mental processes of a juror. *Reynolds v. State*, 126 Idaho 24, 27, 878 P.2d 198, 201 (Ct. App. 1994) (quoting *Roll v. City of Middleton*, 115 Idaho 833, 837, 771 P.2d 54, 58 (Ct. App. 1989)).

ASI states that the "jury returned a verdict that appears to indicate the jury may have found ASI sustained no damages from the breaches of contract and fiduciary duties." Motion, p. 4. ASI wants the verdict changed based on inadmissible hearsay evidence or affidavits that it will obtain in violation of IRE 606(b). As stated above, the jury was polled and eleven of the twelve jurors stated that they affirmatively supported the answer to Question 3 on the special verdict that awarded no damages for the breach of contract and breach of fiduciary duty claims. Interestingly and although eleven jurors agreed with the Answer to Question 3, only nine jurors agreed with the Answer to Question 1 and ten jurors agreed with the Answer to Question 2. It would be folly to read too much into the alleged thought processes necessary to come to near unanimity in finding that ASI did not sustain damages from either the breach of contract or breach of fiduciary duty. However, that is exactly what ASI desperately seeks here so that it can proclaim itself the prevailing party.



**B. Case law decided after the adoption of IRE 606(b) does not allow juror affidavits to be admitted to clarify, explain, or confirm a verdict because that would require inquiry into the internal deliberative process of the jury that is prohibited by the Rule.**

ASI relies on case law that predates the adoption of IRE 606(b) for the proposition that juror affidavits can be obtained to explain, confirm, or clarify a verdict. Rule 606(b) was adopted in 1985. ASI relies on *Umphrey v. Sprinkel*, 106 Idaho 700 (1983) and *Glennon v. Fisher*, 51 Idaho 732 (1932). These cases are inconsistent with IRE 606(b) and the case law that followed the adoption of the Rule. This issue is fully briefed and analyzed in the Sage Defendants opposition to ASI's Motion for Permission to contact jurors and will not be repeated here.

**C. ASI had the opportunity to have the Court inquire further of the jury when the jury was polled but did not inquire at that time and is now prohibited from doing so.**

After the verdict was returned, the Court read the verdict out loud and then polled the jury. ASI's lawyers sat mute when the Court asked, "Would Counsel have further questions of the jurors by the Court?" Transcript, 1/16/15, p. 97-98. None of the parties proposed any further inquiries or sought clarification of the verdict at that time. The jury was then dismissed.

ASI never objected to the Special Verdict form. The Idaho Supreme Court has held that a failure to object to the form of a verdict at the time it is submitted to the jury or when it is returned to the court constitutes a waiver of a right to do so. *Barlow v. Int'l Harvester Co.*, 95 Idaho 881, 890, 522 P.2d 1102, 1111 (1974); *Pacheco v. Safeco Ins. Co. of Am.*, 166 Idaho 794, 780 P.2d 116 (1989). ASI knew that the jury had crossed out the "195,175" under question three of the Special Verdict and replaced it with a zero. ASI knew immediately that this placed in question whether it was the prevailing party under the ECA and/or the prevailing party under a commercial transaction analysis.

However, although ASI was presented with an opportunity to have the Court make further inquiry of the jury regarding the Special Verdict, it declined to seek any type of clarification. ASI should be considered to have waived its ability to inquire further and ASI should be estopped from raising any issue arising from the way in which the jury answered Question 3.

**D. Contrary to ASI's assertion, Federal case law does NOT allow juror affidavits to clarify or explain jury verdicts.**

ASI's representation that federal law supports its right to use juror affidavits to clarify or explain a verdict is misplaced, incorrect and not persuasive when analyzing IRE 606(b). The Sage Defendants' position on this is fully briefed, analyzed and argued in the Sage Defendants opposition to ASI's Motion for Permission to contact jurors and will not be repeated here.

**II. IRCP 59(a) does not allow for an amendment of a judgment entered after a trial by jury.**

ASI has not moved for a new trial. Instead, ASI has requested that the judgment be amended. ASI references IRCP 59(a)(1) and (2) as the basis for its request that this Court amend the judgment. However, Rule 59(a)(7) is clear that a judgment can only be reopened in "an action tried without a jury." Amending the judgement (as opposed to granting a new trial) is an option only in an action tried without a jury. Because this case was tried to a jury, IRCP 59(a) only provides relief in the form of a new trial. ASI has not timely requested a new trial, so ASI is barred from any further relief under IRCP 59(a).

ASI contends that the judgment should be amended to correct a chance verdict. However, ASI has not presented this Court with admissible evidence of a "chance verdict." ASI claims that Ms. Barlow, when discussing the case with Mr. Zarian and Mr. Luvai, did not indicate that the "jury

engaged in 'solemn deliberation' on the issue of which \$195,175 award (Question 3 or Question 5) they should cross out to comply with the jury instructions." Plaintiff's Motion, p. 9. ASI concludes that the jury must have reached the decision by chance. The argument makes no sense and even if one were to accept the alleged testimony of Ms. Barlow it does not support the claim that the jury used chance to arrive at a verdict.

### CONCLUSION

Idaho Rule of Evidence 606(b) and Idaho case law does not allow ASI to attempt to amend or clarify the verdict based on testimony from jurors regarding their mental processes or explanation about why a certain verdict was reached.

There is no doubt that ASI is placed in a predicament by the way the jury answered the Special Verdict. However, ASI did not object to the form of the Special Verdict and did not seek clarification when the jury was still empaneled and could have issued clarification under careful questioning or instruction by the Court. Now ASI is left to resort to inadmissible hearsay and juror affidavits that are barred by IRE 606(b) to support its effort to characterize itself as the prevailing party in this litigation. Even its attempt to rely on IRCP 59(a) for relief is misguided. This Court should deny ASI the relief it requests.

DATED this 12<sup>th</sup> day of February, 2015.

COOPER & LARSEN

  
\_\_\_\_\_  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
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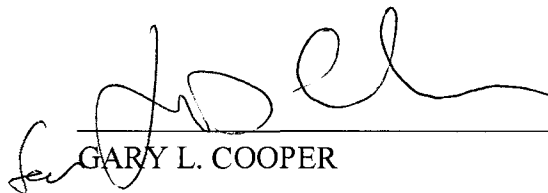
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., )  
an Idaho Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SAGE SILICON SOLUTIONS, LLC., an )  
Idaho Corporation; ZILOG, INC., a )  
Delaware Corporation; DAVID ROBERTS, )  
GYLE YEARSLEY, WILLIAM TIFFANY )  
and Defendants DOES I - X, )  
 )  
Defendants. )

CASE NO. CV-OC-1123344

SAGE DEFENDANTS'  
MEMORANDUM IN OPPOSITION TO  
ASI'S MOTION TO CONTINUE  
HEARING

RELATED COUNTER ACTIONS

## INTRODUCTION

COME NOW the Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany, by and through their attorneys of record, and oppose American Semiconductor, Inc.'s ("ASI") Motion to Continue the Hearing currently scheduled for February 19. The Sage Defendants request that this Court deny ASI's motion because ASI agreed to make the hearing date work. The Sage Defendants oppose ASI's motions for the reasons stated below.

## ARGUMENT

**ASI did waive its "right" to a full briefing schedule when it unconditionally assented to hear motions regarding costs and attorney fees on February 19.**

On February 3, 2015, Madame Clerk for Judge Neville inquired of counsel for the respective parties if counsel could hear the various motions for costs and attorney fees on February 19 at 1:30 p.m. John Zarian, counsel for ASI, responded, "We will make that date work." ASI has now filed a motion to continue the hearing on the grounds that holding the hearing on February 19 because it violates ASI's "right to the full briefing schedule under Rule 54 and 7." ASI argues that it did not waive this right, even though John Zarian unconditionally assented to hearing the motions regarding costs and attorney fees on February 19. ASI claims that the hearing as scheduled on February 19 violates Rules 54 and 7 and should be continued. ASI knew, or should have known, when it consented to the hearing that this would truncate the timelines for responding. No objection was raised when the date was proposed and John Zarian said he would make that date work.

**The Rules of Civil Procedure are flexible and can be altered by a Court based on the circumstances of a particular case.**

The Rules of Civil Procedure are to "be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding." IRCP 1(a). The Rules allow courts to

modify timing requirements, which indicates that timing rules are not rigid. *See* IRCP 6(b) (permitting enlargement of time for motions based on excusable neglect); 56(c) (allowing the mandatory summary judgment timeline to be modified for good cause). The purpose of timing requirements in the Idaho Rules of Civil Procedure is to provide a "party an adequate and fair opportunity to support its case." *Sun Valley Potatoes, Inc. v. Rosholt, Robertson & Tucker*, 133 Idaho 1, 5, 981 P.2d 236, 240 (1999). In *Ponderosa Paint Mfg., Inc. v. Yack*, 125 Idaho 310, 317, 870 P.2d 663, 670 (Ct. App. 1994), the Court of Appeals held that a motion for summary judgment and supporting affidavit were not timely served but refused to reverse the overturn the trial court decision granting the untimely summary judgment motion. The Court of Appeals first cited IRCP 61(b) that the primary concern with the application of the Rules of Civil Procedure is whether the application is consistent "with substantial justice." *Id.*; IRCP 61. The Court of Appeals further noted that there was no prejudice associated with the failure to abide by the timelines imposed by the Rules.

In this case, ASI consented to the date of the hearing without objection. Court has not stated that ASI cannot wait until February 18 to file its objections to the requests for costs and fees filed by the Sage Defendants or Zilog. No one has objected to ASI's stated intent to wait to file objections until February 18. ASI did not argue that it will be prejudiced by the date of the hearing. ASI has only argued that the hearing date does not comply with the rules. This does not impact substantial justice when considering that ASI agreed to the date and the Court expressed its desire to have these motions heard before he leaves the bench at the end of the month.

Furthermore, even the constitutional right to procedural due process, which is the "process to ensure that the individual is not arbitrarily deprived of his or her rights in violation of the state or federal constitutions" is a "flexible concept calling for such procedural protections as

are warranted by the particular situation.” *Neighbors for a Healthy Gold Fork v. Valley Cnty.*, 145 Idaho 121, 127, 176 P.3d 126, 132 (2007). Constitutional due process rights are satisfied when a party is “provided with notice and an opportunity to be heard.” *Id.* If the constitutional right to procedural due process is flexible and dependant on the circumstances, certainly the rules of civil procedure are equally flexible and more easily satisfied.

**The Court has not prevented ASI from waiting until February 18 to file oppositions and neither Zilog nor the Sage Defendants have objected to ASI’s stated intent to do so.**

However, this situation does not require a dramatic analogy to constitutional rights. ASI’s primary concern appears to be that it “did not intend to waive its right to the fourteen day period within which to file its motions to disallow defendants’ memoranda of costs and fees under Rule 54.” ASI’s Supporting Memo, p. 3. The Court has not required ASI to file an opposition motion or memo prior to February 18. The Sage Defendants did not object when ASI stated in the “Request for Clarification of Deadline to Object” that it was not going to file its objections to the Sage Defendant’s request for costs and attorney fees until February 18. The Sage Defendants will not argue prejudice or any other objection based on timeliness of ASI’s objection to the Sage Defendants’ request for costs and attorney fees.

Still, no credence should be given to ASI’s contention that it is somehow surprised or caught off guard by the Sage Defendants’ or Zilog’s requests for costs and fees. First, no judgment was entered against Zilog and Zilog has had a pending motion for sanctions against ASI since the dismissal of the Trade Secret Claim. The Court specifically reserved a determination of costs and attorney fees on the dismissed claims until after trial. The Sage Defendants had previously joined the motion for sanctions. Second, ASI should not be surprised by the Sage Defendants’ request for costs and fees because ASI stated in its own briefing that

SAGE DEFENDANTS’ MEMORANDUM IN OPPOSITION TO ASI’S MOTION TO CONTINUE HEARING - PAGE 4



"the jury returned a verdict that appears to indicate the jury may have found ASI sustained no damages from the breaches of contract and fiduciary duties." ASI's Motion to Amend or Clarify the Verdict, p. 4. As has been briefed, the ECA provides that the prevailing party in an action to enforce the ECA is entitled to costs and attorney fees. ASI acknowledged that the jury did not award damages under the breach of contract claim. Thus, the Sage Defendants should be considered the prevailing party under the ECA and ASI cannot be surprised that costs and fees have been requested.

**If the timelines in the Idaho Rules of Civil procedure are to be considered sacrosanct and held inviolable as ASI argues, ASI's motion and memorandum violate the timelines specified in IRCP 7(b)(3)<sup>1</sup> and should be denied**

ASI contends that the Sage Defendant's motion to disallow ASI's requested costs and fees cannot be heard on February 19 because IRCP 7 requires the motion to be filed 14 days prior to the hearing. ASI should have known that the Court intended to hear all motions related to costs and fees at the February 19 hearing because the rules only contemplate a hearing on costs and fees if such a request is opposed. *See* IRCP 54(d)(6) and 54(d)(7). ASI asserts that the February 19 hearing should be continued because it does not comply with IRCP 7. However, ASI's own motion does not comply with IRCP 7. ASI's motion was served on February 12, 2015. ASI set the hearing for February 19, or seven days after serving the motion. Rule 7(b)(3) requires the motion to be served so that it is received "by the parties no later than fourteen (14) days before the time specified for the hearing." By ASI's own argument its motion to continue the hearing cannot be hearing on February 19. ASI cannot argue that the Rules of Civil Procedure must be complied with while violating the same rule it is trying to enforce.

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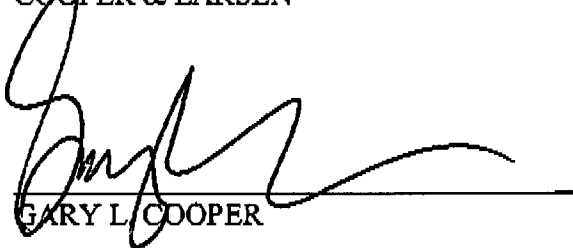
<sup>1</sup>ASI erroneously refers to IRCP 7(a)(3) instead of 7(b)(3) in its supporting memorandum on page 5.

**CONCLUSION**

The Court specified that it wanted to hear the motions for costs and attorney fees on February 19. That would necessarily include oppositions or there would not be a need for the hearing. If oppositions are not filed then the right to object is waived and no hearing is necessary. ASI knew, or should have known, that holding the hearing on February 19 would truncate the timelines contained in the Rules. No one has objected to ASI filing its objections on February 18. ASI should not be able to derail the progress of this case by arguments based on rules that it is violating. The motion to continue should be denied.

DATED this 13<sup>th</sup> day of February, 2015.

COOPER &amp; LARSEN

  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702

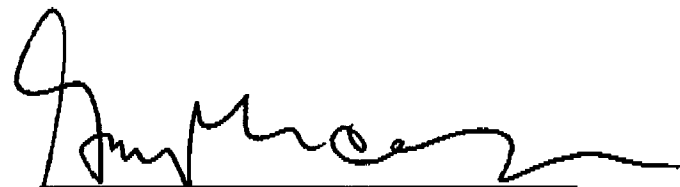
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☐ Express mail  
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Gerald T. Husch  
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☐ Fax: 208-385-5384

  
\_\_\_\_\_  
GARY L. COOPER

mailed/jud  
MAR 21/15

FILED  
A.M. P.M. 4:53

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
Andrea J. Rosholt, ISB No. 8895  
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25332.0000

FEB 17 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DECLARATION OF GERALD T.  
HUSCH IN OPPOSITION TO ASI'S  
MOTION TO CONTINUE HEARING**

DECLARATION OF GERALD T. HUSCH IN OPPOSITION TO ASI'S MOTION TO  
CONTINUE HEARING - 1

Client:3762951.1

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ORIGINAL

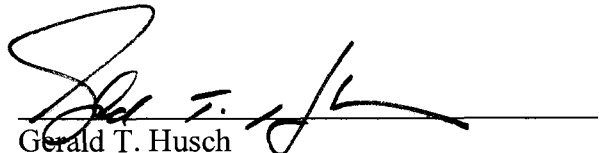
gr

GERALD T. HUSCH declares and states as follows:

1. I am a shareholder with the law firm Moffatt, Thomas, Barrett, Rock & Fields, Chartered ("Moffatt Thomas"), and counsel of record for Defendant Zilog, Inc. ("Zilog"). I have access to my law firm's files regarding this matter, and unless otherwise stated herein, I am making this declaration based upon my own personal knowledge.

2. Attached as Exhibit A is a true and correct copy of two emails that I received on February 3, 2015. Upon information, I believe the first email is an email from Janet Ellis, In-Court Clerk for the Honorable Thomas F. Neville, to various attorneys of record and their staff, in which Ms. Ellis indicated that the Court would like to set motions for attorney fees and costs for hearing on February 19, 2015. Upon information, I believe the second email is an email from John N. Zarian, counsel for plaintiff herein, to Ms. Ellis and others, stating : "We will make the date work."

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

  
Gerald T. Husch

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of February, 2015, I caused a true and correct copy of the foregoing **DECLARATION OF GERALD T. HUSCH IN OPPOSITION TO ASI'S MOTION TO CONTINUE HEARING** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

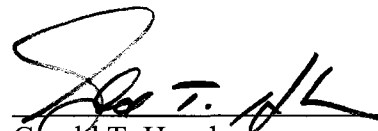
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Daniel W. Bower  
Chad E. Bernards  
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12550 W. Explorer Dr., Suite 100  
Boise, ID 83713  
Facsimile (208) 345-4461  
*Attorneys for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

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Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
800 W. Main St., Suite 1300  
Boise, ID 83702  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

☐ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
\_\_\_\_\_  
Gerald T. Husch

# **EXHIBIT A**

---

**From:** John N. Zarian <JZarian@parsonsbehle.com>  
**Sent:** Tuesday, February 03, 2015 3:24 PM  
**To:** Janet Ellis; gary@cooper-larsen.com; Vivian Meyer (vivian@cooper-larsen.com); Barbie Snell (barbie@cooper-larsen.com); jdoborn@gmail.com; Cathy Pontak; Cheryl Dunham; Kennedy K. Luvai; chad@stm-law.com; Gerry Husch; Steve Thomas  
**Subject:** RE: Motions for Atty Fees and Costs

Thanks, Janet.

We will make the date work.

Best regards,  
John



A Professional  
Law Corporation

**John N. Zarian | Attorney at Law**

800 W. Main Street, Suite 1300 | Boise, Idaho 83702

Main 208.562.4900 | Direct 208.562.4902 | Fax 208.562.4901

parsonsbehle.com | vCard

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**CONFIDENTIALITY NOTICE:** This electronic mail message and any attachment are confidential and may also contain privileged attorney-client information or work product. The message is intended only for the use of the addressee. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you may not use, distribute, or copy this communication. If you have received the message in error, please immediately notify us by reply electronic mail or by telephone at 801.532.1234, and delete this original message.

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**From:** Janet Ellis [mailto:dcellisj@adaweb.net]  
**Sent:** Tuesday, February 03, 2015 2:08 PM  
**To:** gary@cooper-larsen.com; Vivian Meyer (vivian@cooper-larsen.com); Barbie Snell (barbie@cooper-larsen.com); jdoborn@gmail.com; Cathy Pontak; Cheryl Dunham (CLD@moffatt.com); John N. Zarian; Kennedy K. Luvai; chad@stm-law.com; gth@moffatt.com; srt@moffatt.com  
**Subject:** RE: Motions for Atty Fees and Costs

The Judge would like to set this hearing for Feb. 19<sup>th</sup> @ 1:30 p.m. He does not want to pass this motion off to another judge. I hope that counsel can make this date work.



**JANET ELLIS**

IN-COURT CLERK

for Judge Neville

200 West Front Street

Boise, Idaho 83702

(208) 287-7521



FEB 17 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

ORIGINAL

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
Sarah H. Arnett, ISB No. 6545  
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KLuvai@parsonsbehle.com  
SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**PLAINTIFF'S REPLY IN SUPPORT  
OF ITS MOTION TO AMEND OR  
CLARIFY THE VERDICT, OR IN  
THE ALTERNATIVE, AMEND THE  
JUDGMENT**

**ORAL ARGUMENT REQUESTED**

**DATE:** February 19, 2015  
**TIME:** 1:30 p.m.

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following Reply in Support of Plaintiff's Motion to Amend or Clarify the Verdict, or in the Alternative, Amend the Judgment (the "Motion").

### INTRODUCTION

As established in ASI's moving papers, the Court has the inherent power to make its records speak the truth. ASI respectfully submits that the Court should exercise this power to correct the rendered verdict so that it accurately reflects what the jury actually found. In particular, as ASI has previously argued, the rendered Special Verdict does not appear to accurately reflect what the jury actually held. Motion, pp. 1-4. ⇒ approach or amend!

In the Opposition to ASI's Motion to Amend or Clarify the Verdict, or in the Alternative, Amend the Judgment (the "Opposition"), defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany (collectively the "Sage Defendants") raise all the same arguments they have asserted in their Opposition to ASI's Motion for Leave to Contact the Jury. For purposes of judicial efficiency, ASI does not address these arguments here. Rather, ASI respectfully directs the Court's attention to the parties' briefing in that motion.

To the extent Sage Defendants raise three additional issues, they are addressed below.

### LEGAL ARGUMENT

#### **1. ASI Has Established That the Court Should Clarify and/or Amend the Verdict to Accurately Reflect the Actual Verdict.**

In its moving papers, ASI established that the foreperson of the jury, Ms. Barlow, indicated that the rendered verdict does not accurately reflect what the jury actually found in the jury room. *See* Motion, p. 4. The Sage Defendants argue that ASI's conversation with Ms. Barlow is inadmissible hearsay. Opposition, p. 2. However, ASI cannot provide direct testimony from Ms. Barlow as the Court has prohibited any party from further contact with the jury. Otherwise, ASI has shown that use of the

testimony at issue (and thus the contemplated contact) is proper. *See* Motion, pp. 5-8; *see also* Plaintiff's Motion for Leave to Contact the Jury. To the extent the Court allows ASI to further inquire of the jury, ASI intends to supplement this briefing with testimony directly from Ms. Barlow.

**2. The Court Need Not Look Into the Jury's Deliberation Process to Correct the Verdict.**

In the Opposition, the Sage Defendants argue that the Court would need to impermissibly inquire into the jury's thought processes to "change the verdict." Opposition, p. 4. As explained in the Motion, and in more detail in ASI's Motion for Leave to Contact Jurors, this is simply not true. *See* Motion, pp. 5-8; *see also* Plaintiff's Motion for Leave to Contact the Jury. In fact, ASI is only requesting the Court give meaning to what the jury actually held. Questions as to what the jury held, as opposed to why the jury held a certain way, do not delve into the internal deliberation process. Accordingly, the Sage Defendants' argument that the Court would need to inquire into why the jury held as it did is unfounded.

**3. The Court has the Inherent Power to Correct its Records.**

In the Opposition, the Sage Defendants assert one additional argument that is not addressed in the Motion for Leave to Contact the Jurors. The Sage Defendants argue that Idaho Rule of Civil Procedure 59(a) does not allow for amendment of a judgment entered after a trial by jury. *See* Opposition, p. 6. However, Idaho courts have allowed motions under Rule 59 to amend a verdict as a means to circumventing an appeal. *See Slaatheug v. Allstate Ins. Co.*, 132 Idaho 705 (1999) (affirming the trial court's denial of a Rule 59(e) motion to amend the judgment on other grounds, the Idaho Supreme Court noted "as a means to circumvent an appeal, Rule 59(e) provides a trial court a mechanism to correct legal and factual errors occurring in the proceedings before it"); *see also Horner v. Sani-Top, Inc.*, 143 Idaho 230 (2006) (denying a Rule 59(a) motion to amend the judgment after a jury trial on other grounds).

Moreover, and in any event, the Court has the inherent power to correct its records so they speak the truth. *See* Opposition, p. 9. The Sage Defendants do not contest this.

Thus, to the Court may amend the verdict either pursuant to Rule 59 or by exercising its inherent authority to correct the judgment so that it accurately reflects what the jury actually held.

### CONCLUSION

For the reasons set forth in ASI's motion and for the reasons set forth above, ASI respectfully requests the Court clarify/correct the rendered verdict to accurately reflect the jury's actual verdict, or in the alternative, amend the judgment to accurately reflect the jury's actual verdict.

DATED this 17th day of February, 2015.

PARSONS BEHLE & LATIMER

By



John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

**CERTIFICATE OF SERVICE**

17th

I HEREBY CERTIFY that on the ~~14th~~ day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower Chad E. Bernards STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: dbower@stm-law.com chad@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com



Kennedy K. Luvai

FEB 17 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
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SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**REPLY IN FURTHER SUPPORT OF  
AMERICAN SEMICONDUCTOR,  
INC.'S MOTION TO CONTINUE  
HEARING ON MOTIONS FOR FEES  
AND COSTS PURSUANT TO RULES  
54 AND 7**

RELATED COUNTER ACTIONS

ORIGINAL

*22*

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, submits the following reply memorandum in further support of its motion to continue the hearing presently set for February 19, 2015, at least as to the pending fee and costs requests.

### **REPLY**

In the interest of brevity, ASI will not belabor the details of the particular circumstances that have led the parties and the Court to this point; a point where, as discussed further below, ASI is permitted under Rule 54, as extended by Rule 6(e), to file at least one motion to disallow one day after the presently set hearing. Indeed, it was in the hopes of avoiding this, among other unintended outcomes, that ASI first sought to have a telephone conference to work through such issues and, thereafter, filed the instant motion to continue the February 19, 2015, hearing.

ASI is disappointed that rather than accept the increasing infeasibility of the February 19, 2015, hearing, the Sage Defendants have chosen to file an opposition. Accordingly, this brief reply memorandum follows as a means of highlighting at least one flaw in the Sage Defendants' stance.

### **ARGUMENT**

#### **A. THE SAGE DEFENDANTS' "WAIVER" ARGUMENT IS UNAVAILING.**

For the amount of time and space committed by the Sage Defendants in arguing that ASI somehow waived its right for a full briefing schedule on its motions to disallow, they cannot point to any instance where ASI informed counsel or the Court that it was waiving its right to fully brief and be heard on its motions to disallow. Whatever misplaced inferences the Sage Defendants draw from counsel's general statement regarding availability on February 19, 2015, before any motions were filed, simply cannot carry the day.

**B. THE ACTUAL WINDOW FOR ASI TO OBJECT AND MOVE TO DISALLOW THE SAGE DEFENDANTS' REQUEST FOR FEES AND COSTS UNDER RULE 54, AS EXTENDED BY RULE 6, CLOSES ON FEBRUARY 20, 2015.**

Further highlighting the untenability of the Sage Defendants' position, the window for ASI to object and file its motion to disallow the Sage Defendants' request for fees and costs actually expires on *February 20, 2015*, a day *after* the scheduled February 19, 2015, hearing. This flows from the fact that the Sage Defendants served their motion for attorneys' fees and costs on *February 3, 2015* by overnight mail.<sup>1</sup> Thus, in addition to the 14 day window provided for under I.R.C.P. 54(d)(6), ASI is entitled to an extra three days under Rule 6 in light of the Sage Defendants' election of mail as the mode of service. Rule 6(e)(1) provides that: "[w]henever a party has the right or is required to do some act ... within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period."

In a recent opinion, the Idaho Supreme Court put to rest any debate as to whether I.R.C.P. 6(e) applies to papers served by overnight mail. In *Lakeland True Value Hardware, LLC v. Hartford Fire Ins. Co.*, 153 Idaho 716, 728 (2012), the Supreme Court held that "the plain language of the Rule requires that an additional three days' time be granted where mail, overnight or otherwise, is the means by which a document is served." Therefore, in that case, the Supreme Court held that since Hartford served its memorandum of costs via overnight mail on June 10, 2010, the *17 day window* for Lakeland's objection expired on June 27, 2010. *Id.*

---

<sup>1</sup> Although the certificate of service also lists that service was effected by e-mail, counsel for ASI have no record of receiving any such e-mail transmission. In any event, none of the parties to this action have consented to service by e-mail under Rule 5, therefore, any such e-mail service would be ineffectual had it occurred.




By the same token, since the Sage Defendants served their motion for costs and fees by overnight mail, the *17 day window* for ASI to object and file its motion to disallow their request for fees and costs expires on *February 20, 2015*. Given the voluminous post-trial filings, and for reasons further discussed in the moving papers, ASI intends to take advantage of the 17-day window it is entitled to under the rules, at the risk of prejudice.

**CONCLUSION**

For the foregoing reasons, and for the reasons set forth in the moving papers, ASI respectfully submits that the Court should continue the February 19, 2015, hearing for a date and time that will allow for a fair opportunity to brief, under the rules, the issues raised in defendants' motions for fees and costs and any oppositions to ASI's motions to disallow.

DATED this 17th day of February, 2015.

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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David Roberts, Gyle Yearsley and William Tiffany*

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Kennedy K. Luvai

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FEB 17 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
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*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**PLAINTIFF'S REPLY IN SUPPORT  
OF ITS MOTION FOR LEAVE TO  
CONTACT JURORS**

**ORAL ARGUMENT REQUESTED**

**DATE: February 19, 2015**  
**TIME: 1:30 pm**

RELATED COUNTER ACTIONS

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Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following Reply in Support of Plaintiff's Motion for Leave to Contact Jurors ( the "Motion").

### INTRODUCTION

In bringing the Motion, ASI seeks only to contact one or more of the jurors for three limited, proper purposes. First, ASI seeks to contact the foreperson of the jury, Ms. Barlow, for the limited purpose of determining whether the rendered special verdict form accurately reflects the actual findings of the jurors.<sup>1</sup> This contact is proper as it falls outside the scope of Idaho Rule of Evidence 606(b). Second, ASI seeks to contact Ms. Barlow to further inquire into her comment regarding additional guidance that the jury may have received. It appears that such contact is also proper under the limited exceptions of Idaho Rule of Evidence 606(b). Finally, ASI seeks to contact Ms. Barlow to determine whether the jury indiscriminately crossed out one of the two \$195,175 damage awards. Again, this additional contact appears to be proper under the limited exceptions of Idaho Rule of Evidence of 606(b).

Unfortunately, in the Sage Defendants' Memorandum in Opposition to ASI's Motion for Leave to Contact Jurors (hereafter the "Opposition"), the Sage Defendants repeatedly mischaracterize the types of inquiries ASI seeks from the jury. They assert incorrectly that ASI is seeking to invade the thought processes of the jury. They also assert incorrectly that ASI is seeking to "change the verdict." As explained in more detail in the Motion and below, ASI seeks only clarification as to whether the rendered verdict accurately reflects the jury's actual verdict. The Sage Defendants fail to offer any authority establishing that, since the enactment of I.R.E.

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<sup>1</sup> To the extent the Court requires testimony from the additional jurors who answered yes to Questions 1 and 2 of the special verdict form, ASI respectfully requests permissible to contact these additional jurors.

606(b), Idaho has even addressed this precise issue. Instead, the Sage Defendants repeatedly rely on cases in which the party is seeking to submit jury affidavits in an effort to *overturn* a verdict.

As to ASI's request to contact Ms. Barlow regarding any additional guidance and the potential for an improper chance verdict, such inquiries are clearly proper under I.R.E. 606(b).

As a treshhold matter, in the Opposition, the Sage Defendants do not dispute that I.R.E. 606(b) allows juror affidavits for certain limited exceptions. The parties are in further agreement that Rule 606(b) does not prohibit use of juror affidavits to establish improper influences or chance verdicts. Instead, the Sage Defendants argue, without providing any authority, that ASI does not have a good faith basis for contending that these circumstances may exist.

Of course, it would be impossible to establish these circumstances definitively without contacting the jury. As detailed in the moving papers and herewith, ASI has a good faith to believe there is good cause to inquire further. The instant Motion is respectfully brought for that very reason, and to explain why this case appears to fall within the exceptions to I.R.E. 606(b).

Lastly, the Sage Defendants suggest that it was improper for ASI's counsel to speak to Ms. Barlow as they left the courthouse. This argument is without merit.

Indeed, although not disclosed in the Opposition, the Sage Defendants' own attorney, Mr. Chad Benards, similarly approached Ms. Barlow to discuss essentially the very same topics.

## **LEGAL ARGUMENT**

### **I. Juror Contact Regarding Whether the Rendered Verdict Accurately Reflects the Jury's Actual Findings is Proper.**

#### **a. For Purposes of Clarifying/Explaining the Rendered Verdict, ASI Seeks to Contact the Jury on the Limited Topic of What the Jury Held.**

As set forth in more detail in the moving papers, ASI seeks to contact the jury, in part, for the limited purpose of confirming whether the rendered verdict accurately reflects the jury's actual verdict. *See* Motion, pp. 1-9.

In their Opposition, the Sage Defendants dispute the foregoing, contending that ASI is improperly seeking contact to “explain the thought processes of the jurors” and “explain how the jury applied a specific jury instruction” in an effort “to change the verdict.” Opposition, pp.7-8. The Sage Defendants also cite a number of cases to establish that juror testimony regarding deliberations is inadmissible to impeach a verdict unless the testimony falls within one of three limited exceptions to Rule 606(b). See Opposition, pp. 5-6 (citing *State v. Setzer*, 136 Idaho 477, 36 P.3d 829 (Ct. App. 2001) (narrowly holding that juror “testimony regarding the jurors alleged compromise by which a verdict was reached” does not fall into the “three specific types of juror misconduct” included in Rule 606(b) and thus, such affidavits were inadmissible to impeach a guilty verdict); *Levinger v. Mercy Med. Ctr., Nampa*, 139 Idaho 12, 75 P.3d 1202 (2003) (though not addressing the issue of whether the rendered verdict accurately reflected the jury’s actual verdict, holding Rule 606(b) does not bar all juror testimony not falling within an exception to that Rule); *State v. DeGrat*, 128 Idaho 352, P.2d 568 (1996) (barring a criminal defendant from using juror affidavits solely to impeach a guilty verdict because such affidavits included testimony that did not fall within Rule 606(b)’s three exceptions); *State v. Webster*, 123 Idaho 233, 238 P.2d 846 (Ct. App. 1993) (not addressing the issue of whether a rendered verdict accurately reflects the jury’s actual verdict, a criminal defendant could not submit juror affidavits to impeach a guilty verdict where such testimony did not fall into the Rule 606(b)’s limited exceptions); *Reynolds v. State*, 126 Idaho 24, 878 P.2d 198 (where there was no dispute as to whether the rendered verdict accurately reflected the jury’s actual verdict, Rule 606(b) bars a criminal defendant from submitting juror affidavits to impeach a guilty verdict where such testimony is offered to “show how [] evidence affected the final verdict”). These cases are not helpful because ASI does *not* dispute that such testimony may not be used to impeach a verdict.

The Sage Defendants' argument presupposes that the rendered verdict is clear and that ASI is seeking to question the jurors as to why they held as they did. That is simply not the case. ASI is not seeking to question any juror as to why he or she held as they did; rather, ASI is requesting permission to contact one or more members of the jury to determine what the jury actually held and whether those findings are accurately reflected in the rendered verdict.

Of course, any concern the Sage Defendants may have regarding potential intrusion into the juror's thought process could and would certainly be diminished by the Court's close monitoring of any and all communications with jurors.

**b. The Question of Whether – Post-Rule 606(b) Enactment – Juror Affidavits May Be Used to Clarify/Explain that the Rendered Verdict Accurately Reflects the Jury's Actual Verdict is an Issue of First Impression in Idaho.**

As explained by ASI in its moving papers, the following issue appears to be one of first impression in Idaho: after enactment of Rule 606(b), may juror affidavits be used to explain and/or clarify whether the rendered verdict accurately reflects what the jury actually found in the jury room. *See* Motion, pp. 6-9. In their Opposition, the Sage Defendants do not dispute that Idaho has not addressed this precise issue. Instead, they argue that "case law decided after the adoption of IRE 606(b) does not allow juror affidavits to be admitted to clarify, explain, or confirm a verdict because that would require inquiry into the internal deliberative process of the jury which is prohibited by the Rule." Opposition, p. 6. To support this argument, the Sage Defendants rely on two cases – neither of which address the issue of whether juror affidavits may be used to explain or clarify whether a rendered verdict accurately reflects what the jury actually found. *See* Opposition, pp. 6-8 (citing *Lehmkuhl v. Bolland*, 114 Idaho 503, 757 P.2d 1222 (Ct. App. 1988) and *Andrews v. Idaho Forest Industries, Inc.*, 117 Idaho 195, 786 P.2d 586 (Ct. App. 1988)). Moreover, as detailed below, the two cases relied upon by the Sage Defendants involve vastly different circumstances and are simply not applicable.

In *Lehnkuhl*, the plaintiff appellants raised a number of issues, including alleged error relating to certain jury instructions. *Lehnkuhl*, 114 Idaho at 504-505. Significantly, the plaintiffs in *Lehnkuhl*, unlike here, did not raise any questions as to whether the rendered verdict accurately reflected the jury's actual verdict. *Id.* The question before the *Lehnkuhl* Court was whether a juror affidavit can be used to impeach a verdict where the testimony relates to the process a jury used to reach a verdict – a verdict that was accurately reflected in the rendered verdict. *Id.* In other words, the appellants were seeking to introduce juror testimony for the purpose of explaining why the jury found as it did for the purpose of getting a new trial. *Id.* That is not the issue here. Instead, ASI is seeking to contact the jury to determine what the jury held.

The Sage Defendants' reliance on *Andrews* is even less persuasive. Again, the appellant in *Andrews* did not question whether a juror affidavit may be used to establish what a jury actually found. At the time the *Andrews* opinion was decided, Rule 606(b) contained only one exception – the “extraneous prejudicial information” exception. *Andrews*, 117 Idaho at 198. The question before the *Andrews* Court was whether juror testimony may be used to impeach a verdict under Rule 606(b) where such testimony relates to members of the jury misunderstanding the jury instructions. *Id.* In that context, the *Andrews* Court held that a juror's misunderstanding of jury instructions does not constitute “extraneous prejudicial information” and thus, does not fall within the “extraneous prejudicial information” exception to Rule 606(b). *Id.* In *Andrews*, like in *Lehnkuhls*, the question before the court relates to why a jury reached a certain verdict, as opposed to what the jury actually decided. Here, ASI is only seeking to learn what the jury actually found to determine whether the rendered verdict accurately reflects those findings.

As detailed in the moving papers, there is good cause to believe that what the jury actually held is not accurately reflected in the rendered verdict. *See* Motion, pp. 3.



In this regard, and too further clarify, during Mr. Zarian and Mr. Luvai's conversation with Ms. Barlow regarding the award amounts, Ms. Barlow indicated that the money award amount for the breach of contract and breach of fiduciary duty claims was crossed off based on the double recovery instruction *after* the jury determined that ASI was damaged as a direct result of those breaches in the amount of \$195,175. *See* Affidavit of John N. Zarian in Further Support of Plaintiff's Motion, ¶ 5. Thus, there is a good faith basis to question whether the \$0 award in response to Question 3 of the special verdict form accurately reflects the jury's findings.

For at least these reasons, ASI submits that further contact with at least Ms. Barlow should be permitted on the narrow topic of what the jury actually held.<sup>2</sup>

**c. The Majority of Federal Case Law Does Not Apply Rule 606(b) to Prohibit Juror Affidavits Used to Clarify Whether the Rendered Verdict Accurately Reflects the Actual Verdict the Jury Found.**

As detailed in ASI's Motion and above, Idaho has not addressed the issue of whether Rule 606(b) applies to prohibit the use of juror affidavits to clarify whether a rendered verdict accurately reflects the jury's actual verdict. *See infra*; *see* Motion pp. 6-8. As this is an issue of first impression, federal decisions applying similar statutes may be useful. *See e.g. McCallister v. Dixon*, 154 Idaho 891, 897 (2013). In this regard, ASI has established that the majority of federal decisions relating to this precise issue hold that comparable rules do not prohibit use of juror affidavits to establish whether the rendered verdict accurately reflects what the jury actually held. *See* Motion, pp. 5-9. In the Opposition, the Sage Defendants assert there are substantial differences between the Federal Rule of Evidence 606(b) and I.R.E. 606(b). *Id.* The Sage Defendants further argue that federal cases apply Rule 606(b) to prohibit such use of juror affidavits. *See* Opposition, pp. 10-13. As detailed below, these arguments are not persuasive.

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<sup>2</sup> Of course ASI will not inquire into the reasons the jury reached its verdict.

As noted, the Sage Defendants argue that federal cases applying the Federal Rule of Evidence 606(b) are not instructive because the exceptions to that Rule are different than the exceptions found in I.R.E. 606(b). *Id.* This argument is not persuasive, however, as Idaho enacted I.R.E. 606(b) directly after its federal counterpart. *See Lehmkuhl*, 114 Idaho at 508. There is no reason to suggest, and Sage Defendants have not offered any evidence, that Idaho would reject the addition of an exception for mistakes made in entering the actual verdict on the verdict form. This additional exception is precisely what ASI is asking the Court to consider.

The Sage Defendants also cite the advisory note made after the 2006 amendment as evidence the Court should not permit ASI to contact the jury “to explain a juror’s misunderstanding of jury instructions or the consequence of a result that was agreed up to.” *See* Opposition, p. 11. Contrary to the Sage Defendants’ assertions, however, this advisory note speaks directly to the issue presently before the Court. The advisory committee noted that: “the exception established by the amendment is limited to cases such as ‘where the jury foreperson wrote down, in response to an interrogatory, a number different from that agreed upon by the jury, or mistakenly stated that the defendant was ‘guilty’ when the jury had actually agreed that the defendant was not guilty.’” Federal Rule of Evidence 606, 2006 Amendments (internal citations omitted). Here, there is in fact evidence the foreperson of the jury wrote down a number – \$0 – that was different from the number originally agreed upon by the jury – \$195,175.

The Sage Defendants further dispute ASI’s reliance on certain federal cases as being specifically rejected by the 2006 amendment. While the advisory note to the 2006 amendment does reference two cases cited in the Motion, ASI’s reliance is not misplaced. The advisory note states the amendment “specifically rejects the broader exception, adopted by some courts, permitting the use of juror testimony to prove that the jurors were operating under a

misunderstanding about the consequences of the result that they agreed upon.” See FRE 606, 2006 Amendments. The advisory committee then cites to *Attridge v. Cencorp Div. of Dover Techs. Int’l, Inc.*, 836 F.2d 113 (2d Cir. 1987). However the narrow holding of *Attridge* is consistent with the 2006 advisory note. *Id.* at 116. Indeed, the 2006 advisory note’s statement limiting the amendment to cases where the “jury foreperson wrote down a number different than that agreed upon by the jury” appears to contemplate the exact circumstances found in *Attridge*. In *Attridge*, the Second Circuit limited its holding to circumstances where “a mistaken verdict had been announced.” *Attridge* at 117. Such a limited holding is in accord with the 2006 advisory note.<sup>3</sup>

Again, as detailed in ASI’s Motion and above, the majority of federal decisions recognize that F.R.E. 606(b) does not prohibit juror affidavits submitted for the purpose of clarifying or explaining what the jury actually found in the jury room. The Sage Defendants’ arguments to the contrary are not persuasive. For these reasons, ASI should be allowed to contact one or more members of the jury to determine what the majority of the jury found.

**d. Contrary to the Sage Defendants’ Assertions, ASI Has Not Waived any Right to Make Limited Further Inquiry of the Jury.**

In their Opposition, the Sage Defendants appear to argue that ASI has waived any right to further inquiry of the jury by remaining quiet when the Court asked if counsel had any further

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<sup>3</sup> Sage Defendants also criticize ASI’s reliance on *Karl v. Burlington N.R.*, 880 F.2d 68 (8th Cir. 1989). Opposition, pp. 12-13. However, Sage Defendants misconstrue ASI’s reliance on *Karl*. ASI cited *Karl* for that court’s limited recognition that 606(b) does not bar juror testimony as to whether the verdict delivered in court was that actually agreed upon by the jury. Indeed, ASI acknowledged the questioned error in *Karl* did not go to that issue, but rather “the error in question went to the validity of the of the verdict where jurors’ testimony and affidavits contained specific references that concerned the jurors’ thought processes.” Motion, p. 7. The Eighth Circuit’s recognition that 606(b) does not bar juror testimony as to whether the verdict delivered in court was that actually agreed upon by the jury is precisely the type of cases contemplated by the 2006 advisory note.

questions for the jury before dismissing them. Opposition, p. 9. They argue that ASI should be prohibited from contacting the jurors because “ASI knew that the jury had crossed out the \$195,175 under Question 3 of the Special Verdict and replaced it with a zero.” *See id.* at pp. 9-10 (internal citation omitted). In an effort to support this argument, they rely on an Idaho Supreme Court decision relating to juror misconduct. *Id.* (citing *Pacheco v. Safeco Ins. Co. of Am.*, 116 Idaho 794 (1989)). Thus, although the Sage Defendants assert there is no evidence of jury misconduct here, they are apparently asking the Court to extend the ruling in *Pacheco* to apply to the circumstances of this case. As detailed below, this argument lacks merit.

In *Pacheco*, the appellant sought to impeach the verdict by alleging jury misconduct. *Pacheco*, 116 Idaho at 801. The alleged misconduct involved a witness for the winning party giving a juror a three-block car ride. *Id.* In that case, it was undisputed that the non-prevailing party knew about this car ride before the verdict was returned, but kept silent. *Id.* The circumstances in *Pacheco* are far removed from the present case. First, the *Pacheco* decision involves a party’s attempt to impeach a verdict. That is not the case here. Second, the *Pacheco* court held that a claim for juror misconduct is waived when a party or its counsel knew of the conduct in question before the verdict was returned. *Id.* Here, ASI and its counsel had no knowledge before the verdict was returned of any potential conduct relating to whether the rendered verdict accurately reflected the actual verdict. ASI’s counsel only learned of this potential error after the jury had been discharged.<sup>4</sup> The Sage Defendants fail to show how the

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<sup>4</sup> The Sage Defendants contend that ASI’s counsel approached the foreperson of the jury immediately after the jury was dismissed and that the proper procedure would have been to bring “this issue” – which was not discovered until after the jury had been discharged – “to the Court’s attention before the jury was dismissed.” Opposition, p. 3. In fact, ASI’s counsel did not approach the jury foreperson immediately after the jury was dismissed to inquire only about why the \$195,175 had been crossed out. Instead, as ASI’s counsel was leaving the courthouse, they

crossing out of the damage award could have been an indication that the jury found in ASI's favor for breach of contract and that ASI was actually damaged in the amount of \$195,175.

Finally, the Sage Defendants' "waiver" argument – even as it relates to jury misconduct – is not consistent with Idaho law. Under Idaho law, a party has not waived claims related to jury misconduct where the conduct relates to verdicts – even where the: (1) jury was polled; (2) party failed to object to a special verdict form; and (3) party may have suspected the verdict was an improper quotient verdict. See *Watson v. Navistar Intern. Transp. Corp.*, 121 Idaho 643, 827 P.2d 656 (1990). In *Watson*, the respondent argued that *Pacheco* supported its argument that the petitioner "waived any right to question or challenge the verdict by not objecting at the time the jury was polled." *Id.* at 650. The Idaho Supreme Court disagreed, noting that the respondent's "reliance on [*Pacheco* and other similar cases] is misplaced." *Id.* "[T]he Idaho Rules of Civil Procedure recognize that a party has no way of knowing whether a verdict was an impermissible quotient verdict until some of the jurors had been interviewed." *Id.*

Here, like in *Watson*, there are good faith questions surrounding the rendered verdict that can only be answered by interviewing one or more jurors. For this additional reason, ASI respectfully submits that it should at least be allowed limited contact with the jury.

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saw Ms. Barlow and asked her if she would mind discussing the case. (In doing so, ASI's counsel acted exactly in the same way as the Sage Defendants' own counsel.) She was happy to discuss several aspects of the case. It was only during this conversation that ASI's counsel first learned the jury actually found the Sage Defendants breached their contract and that ASI was damaged by the Sage Defendants' conduct in the amount of \$195,175. Under the circumstances, there is no logic in Sage Defendants' argument that ASI should have brought something to the Court's attention before the jury was dismissed when ASI did not learn of any potential issues with the accuracy of the rendered verdict until *after* the jury was dismissed.

## **II. ASI Should be Allowed to Contact the Jury Regarding Topics Falling Under Exceptions to I.R.E. 606(b).**

As argued in the moving papers, Rule 606(b) allows use of juror affidavits to question the validity of a verdict in three limited circumstances: a juror may testify or provide an affidavit concerning (a) whether extraneous prejudicial information was improperly brought to the jury's attention; (b) whether any outside influence was improperly brought to bear upon any juror; or (c) whether the jury determined any issue by resort to chance. *See* Motion, p. 10 (citing Idaho Rule of Evidence 606(b)).

In the Opposition, the Sage Defendants argue that "ASI offered a reasonable explanation for the 'additional guidance' statement." Opposition, p. 13. To be sure, the statement *may* be subject to a perfectly innocent explanation; on the other hand, other explanations would raise concerns. *See* Motion, p. 10 (citing *Rueth v. State*, 100 Idaho 203, 596 P.2d 75 (Idaho 1978)). Under the circumstances, ASI respectfully requests leave to contact the jury to inquire.

ASI has also established that there is a good faith question as to whether at least a portion of the verdict may have been reached by chance. *See* Motion, p. 10. In the Opposition, the Sage Defendants do not offer any evidence or authority to establish the verdict was not by chance. Instead, they contend that "Ms. Barlow did not tell Mr. Zarian and Mr. Luvai that the decision was made by a result the chance." Opposition, p. 14. However, where one damage number was crossed out to ensure the jury did not award the same damages twice, and the other number was left in place, there is the unresolved question of whether the jury deliberated about which number to cross out, or simply did so by chance. If they did not deliberate (and Ms. Barlow made no indication the jury further deliberated on that point), at least a portion of the verdict is an improper chance verdict. Thus, ASI respectfully requests the Court permit ASI to further inquire of the jury regarding this narrow issue to determine whether there was a chance verdict.

## CONCLUSION

For at least the foregoing reasons, and for the reasons detailed in the Motion, ASI respectfully asks the Court for leave to contact at least the jury foreperson on the narrow issue of whether the verdict rendered accurately reflects the jury's true verdict. To the extent the Court finds the rendered verdict accurately reflects the jury's true verdict, ASI respectfully requests leave to contact the jury only pursuant to the limited exceptions of I.R.E. 606(b).

DATED this 17th day of February, 2015.

PARSONS BEHLE & LATIMER

By

  
John N. Zarian

Kennedy K. Luvai

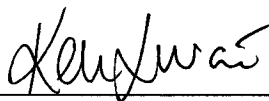
Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile Email: srt@moffatt.com gth@moffatt.com



Kennedy K. Luva



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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. *So*

FEB 17 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

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Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
corporation; ZILOG, INC., a Delaware  
corporation; DAVID ROBERTS; GYLE  
YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants.

RELATED COUNTER ACTIONS

Case No. CV OC 1123344  
*The Honorable Thomas F. Neville*

**AFFIDAVIT OF JOHN N. ZARIAN IN  
SUPPORT OF PLAINTIFF'S REPLY IN  
SUPPORT OF ITS MOTION FOR  
LEAVE TO CONTACT JURORS**

**AFFIDAVIT OF JOHN N. ZARIAN IN SUPPORT OF PLAINTIFF'S REPLY IN  
SUPPORT OF ITS MOTION FOR LEAVE TO CONTACT JURORS - 1**

John N. Zarian, being first duly sworn upon oath, depose and say as follows:

1. I am duly licensed to practice law in the State of Idaho and before this Court, and I am a shareholder with the law firm of Parsons Behle & Latimer ("Parsons Behle").

2. Since July 2012, I have served as lead counsel representing plaintiff and counterdefendant American Semiconductor, Inc. ("ASI") in the above-entitled action.

3. Unless otherwise stated, I have personal knowledge of the matters set forth in this affidavit and, if called upon, could and would testify competently and truthfully to the facts and matters set forth herein.

4. I am submitting this affidavit in further support of ASI's Motion for Leave to Contact Jurors, particularly with regard to clarifying the conversation Mr. Luvai and I had with Ms. Barlow.

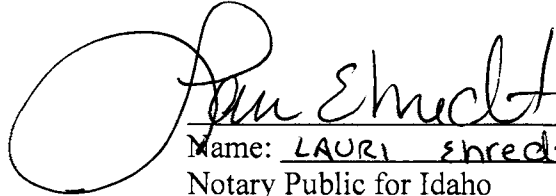
5. To our recollection, during the conversation that Mr. Luvai and I had with Ms. Barlow regarding the trial of this cause, Ms. Barlow indicated that the money award figure originally shown for the breach of contract and breach of fiduciary duty claims was crossed off based on the double recovery instruction *after* the jury had determined that ASI was damaged as direct result of those breaches in the amount of \$195,175.

Further, your affiant sayeth naught.

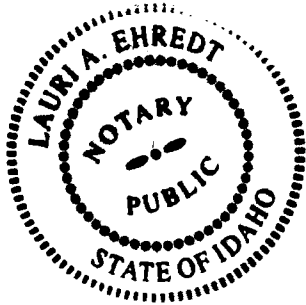
  
\_\_\_\_\_  
John N. Zarian

STATE OF IDAHO                    )  
  ) ss.  
County of Ada                    )

SUBSCRIBED AND SWORN before me this 17<sup>th</sup> day of February, 2015.



Name: LAURI Ehredt  
Notary Public for Idaho  
Residing at Boise, Idaho  
My commission expires 08/18/2016



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17<sup>th</sup> day of February, 2015, a true and correct copy of the within and foregoing instrument was served upon:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
*Attorney for Defendants Sage Silicon Solutions, LLC,  
David Roberts, Gyle Yearsley and William Tiffany*

☐ U.S. Mail, Postage Prepaid  
☒ Facsimile: (208) 235-1182  
☐ Hand Delivery  
☐ Overnight Delivery  
☐ Email: gary@cooper-larsen.com  
barbie@cooper-larsen.com

Daniel W. Bower  
STEWART TAYLOR & MORRIS PLLC  
12550 W. Explorer Drive, Suite 100  
Boise, ID 83713  
Telephone: (208) 345-3333  
*Attorney for Counterclaimants Sage Silicon Solutions,  
LLC, David Roberts, Gyle Yearsley and William  
Tiffany*

☐ U.S. Mail, Postage Prepaid  
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☐ Email: dbower@stm-law.com  
suzie@stm-law.com

Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile  
*Attorneys for Defendant Zilog, Inc.*

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☒ Facsimile: (208) 385-5384  
☐ Hand Delivery  
☐ Overnight Delivery  
☐ Email: srt@moffatt.com  
gth@moffatt.com



Kennedy K. Luvai

Revised/Trans  
mfe 2/19/15

FEB-18-2015 15:02

COOPER-LARSEN

208 235 1182 P.002/008

ORIGINAL

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

FEB 18 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

Gary L. Cooper - Idaho State Bar #1814  
COOPER & LARSEN, CHARTERED  
151 North Third Avenue, Second Floor  
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*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
Gyle Yearsley and William Tiffany*

Chad Bernards  
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Facsimile: (208) 345-4461  
Email: [chad@stm-law.com](mailto:chad@stm-law.com)

*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, RUSSELL LLOYD,  
WILLIAM TIFFANY, EVELYN PERRYMAN,  
and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

AFFIDAVIT OF JOHN D. OBORN RE:  
ADDITIONAL COSTS AND FEES

SAGE SILICON SOLUTIONS, LLC, an )  
 Idaho limited liability company; DAVID )  
 ROBERTS, GYLE YEARSLEY, RUSSELL )  
 LLOYD, WILLIAM TIFFANY, EVELYN )  
 PERRYMAN, individuals, )  
 )  
 Counterclaimants, )  
 )  
 vs. )  
 )  
 AMERICAN SEMICONDUCTOR, INC., )  
 an Idaho Corporation, )  
 )  
 Counterdefendant. )  
 \_\_\_\_\_ )

STATE OF IDAHO )  
 ) :ss  
 County of Bannock )

JOHN D. OBORN, being first duly sworn on oath, deposes and states as follows:

1. I am an attorney for the Sage Defendants in this case and the information in this Affidavit is based on my personal knowledge.
2. Additional costs and fees have been incurred by the Sage Defendants in pursuing and defending against post trial motions. The costs and fees detailed below should be awarded in addition to costs and fees previously requested and supported by the affidavit of Gary L. Cooper because they were incurred in bringing and defending against requests for costs and fees.
3. Attached to this affidavit is a spreadsheet detailing the additional attorney fees that have been incurred since filing of the Sage Defendants' Memorandum in Support of an Award of Costs and Attorney Fees. Attorney fees in the amount of \$6,566.00 should be awarded in addition to those fees previously requested.

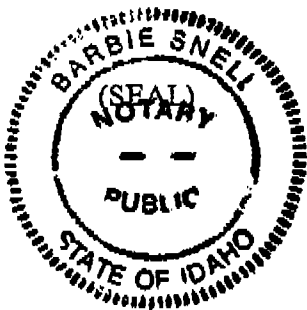
4. Attached to this affidavit is a spreadsheet detailing additional costs that have not been previously requested but should be awarded to the Sage Defendants pursuant to the terms of the Employee Confidentiality Agreement. The additional costs include an invoice for expert services rendered by Montc Dalrymple that was not considered in the previous calculations of costs. A true and correct copy of the invoice is attached. Costs in the amount of \$1,880.06 should be awarded in addition to those costs previously requested.


5. The total additional costs and fees that should be awarded is \$8,446.06. To the best of my knowledge the additional costs and fees are correctly calculated and were reasonably incurred.

DATED this 18<sup>th</sup> day of February, 2015.

  
JOHN D. OBORN

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of February, 2015



  
NOTARY PUBLIC FOR IDAHO  
Residing at Pocatello  
My commission expires: 5-26-17

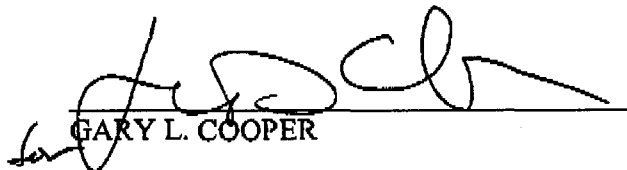
**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian [ ] U.S. mail  
Kennedy K. Luvai [ ] Express mail  
Parsons Behle & Latimer [ ] Hand delivery  
800 W Main Street, Suite 1300 [ ] Electronic delivery: [jzarian@parsonsbehle.com](mailto:jzarian@parsonsbehle.com)  
Boise, ID 83702 [kluvai@parsonsBehlc.com](mailto:kluvai@parsonsBehlc.com)  
[x] Fax: 208-562-4901

Chad Bernards [ ] U.S. mail  
Stewart Taylor & Morris, PLLC [ ] Express mail  
12550 W Explorer Drive, Suite 100 [ ] Hand delivery  
Boise, ID 83713 [ ] Electronic delivery [dbower@stm-law.com](mailto:dbower@stm-law.com)  
[x] Fax: 208-345-4461

Gerald T. Husch [ ] U.S. mail  
Moffatt Thomas Barrett Rock & Fields [ ] Express mail  
101 S. Capitol Blvd., 10<sup>th</sup> Floor [ ] Hand delivery  
P.O. Box 829 [ ] Electronic delivery [gth@moffatt.com](mailto:gth@moffatt.com)  
Boise, ID 83701 [x] Fax: 208-385-5384

  
GARY L. COOPER



2/18/2015

12-119 ASI v Sage  
Additional Attorney Fees Report

Case	Trans Date	User	Exp Cat	Bill Code	Rate	Hrs Workd	Hrs Billed	Amount	Description
12119	2/1/2015	GLC	6	0	\$ 160.00		4.4	\$ 704.00	Finalize memorandum in support of motion for fees and costs (15 pages)
12119	2/2/2015	GLC	6	0	\$ 160.00	0.3	0.3	\$ 48.00	Telephone conference with Huch's office to coordinate claims for reimbursement of expert witness fees from Janzen, Reinstein, Donohoe and Dalrymple
12119	2/2/2015	GLC	6	0	\$ 160.00	0.2	0.2	\$ 32.00	Telephone conference with Reinstein re: final bill from trial testimony
12119	2/2/2015	GLC	6	0	\$ 160.00	0.2	0.2	\$ 32.00	Telephone conference with Janzen re: bill for deposition
12119	2/2/2015	GLC	6	0	\$ 160.00	0.3	0.3	\$ 48.00	Receive and review accounting from Huch's office re: what ASI owes to depose our expert witnesses
12119	2/5/2015	JDO	6	0	\$ 130.00	0.6	0.6	\$ 78.00	Review and analyze ASI's motion and memorandum on costs and fees (17 pages)
12119	2/5/2015	JDO	6	0	\$ 130.00	0.4	0.4	\$ 52.00	Review and analyze ASI's motion for leave to contact jurors (11 pages)
12119	2/5/2015	JDO	6	0	\$ 130.00	0.4	0.4	\$ 52.00	Review and analyze ASI's motion to amend or clarify verdict or amend the judgment (10 pages)
12119	2/5/2015	JDO	6	0	\$ 130.00	2.1	2.1	\$ 273.00	Research case law cited by ASI in their motion for leave to inquire of jury members re: why damages were not awarded for breach of contract and fiduciary duty - reviewed 8 cases (approximately 55 pages)
12119	2/5/2015	JDO	6	0	\$ 130.00	0.9	0.9	\$ 117.00	Review and analyze Zilog's memorandum in support of costs and fees (47 pages)
12119	2/5/2015	JDO	6	0	\$ 130.00	0.3	0.3	\$ 39.00	Emails to adjusters and insureds describing the post-trial motions filed by ASI and Zilog
12119	2/5/2015	JDO	6	0	\$ 130.00	0.3	0.3	\$ 39.00	Draft joinder with Zilog's motion for attorney fees and costs (2 pages)
12119	2/9/2015	GLC	6	0	\$ 160.00	0.5	0.5	\$ 80.00	Communications with Don Farley and Tony Contrill re: affidavit concerning prevailing attorney fees for this type of litigation (3 phone calls and several emails)
12119	2/9/2015	GLC	6	0	\$ 160.00	0.4	0.4	\$ 64.00	Review and analyze Zarian's motion for clarification re: date for response to motion for fees (4 pages)
12119	2/9/2015	GLC	6	0	\$ 160.00	1.4	1.4	\$ 224.00	Revise and finalize memorandum in opposition to jury contact
12119	2/9/2015	GLC	6	0	\$ 160.00	0.5	0.5	\$ 80.00	Revise and finalize memorandum in opposition to ASI's motion for fees and costs
12119	2/9/2015	GLC	6	0	\$ 160.00	0.9	0.9	\$ 144.00	Revise and finalize memorandum in opposition to motion to amend judgment
12119	2/9/2015	JDO	6	0	\$ 130.00	2.9	2.9	\$ 377.00	Prepare draft of memorandum opposing ASI's request for costs and attorney fees (10 pages)
12119	2/9/2015	JDO	6	0	\$ 130.00	0.9	0.9	\$ 117.00	Review trial transcript portions related to jury instructions, special verdict and polling of the jury in preparation to respond to ASI's post trial motions (134 pages)
12119	2/9/2015	JDO	6	0	\$ 130.00	3.4	3.4	\$ 442.00	Prepare draft memorandum opposing ASI's motion for leave to contact jurors (15 pages)
12119	2/10/2015	JDO	6	0	\$ 130.00	2.4	2.4	\$ 312.00	Prepare draft memorandum opposing ASI's motion to amend verdict or to amend the judgment (8 pages)
12119	2/13/2015	JDO	6	0	\$ 130.00	0.4	0.4	\$ 52.00	Review and analyze ASI's motion and memorandum to continue attorney fee hearing (7 pages)
12119	2/13/2015	JDO	6	0	\$ 130.00	0.4	0.4	\$ 52.00	Research flexibility in rules of civil procedure and case law allowing for divergence from timelines for filing motions and setting hearings
12119	2/13/2015	JDO	6	0	\$ 130.00	1.6	1.6	\$ 208.00	Prepare draft memorandum opposing ASI's motion to continue hearing on costs and attorney fees (6 pages)
12119	2/19/2015	JDO	6	0	\$ 130.00	10	10	\$ 1,300.00	Appear for hearing on costs and attorney fees in Boise - includes travel time
12119	2/19/2015	GLC	6	0	\$ 160.00	10	10	\$ 1,600.00	Appear for hearing on costs and attorney fees in Boise - includes travel time

46.1 Total Hours  
\$ 6,566.00 Total Fees

7/18/2015

12-119 ASI v Sage  
Additional Attorney Costs report

Expenses									
12119	2/4/2015	GLC	0	0	\$	-	0	0	\$ 582.50 Ck #33492 to Monte Dalrymple, Expert Services
12119	2/9/2015	GLC	0	0	\$	-	0	0	\$ 500.06 Ck #33507 to Susan M Wolf, 1-13-15 Transcript
12119	2/18/2015	GLC	0	0	\$	-	0	0	\$ 812.50 Ck #33537 to Susan Wolf, various hearing and trial transcripts
12119	2/18/2015	GLC	0	0	\$	-	0	0	\$ 85.00 Ck #33530 to Susan Wolf, trial testimony transcripts
									\$ 1,880.06 Expenses
									\$ 8,446.06 Total New Fees & Costs

Monte J. Dalrymple  
2129 Wedgewood Way  
Livermore, CA 94550-6664

e-mail: [monted@systemvde.com](mailto:monted@systemvde.com)

## INVOICE

**SHIP TO:**

State Farm  
c/o  
Cooper & Larsen, Chartered  
P.O. Box 4229  
Pocatello, ID  
83205-4229

Salesperson:		Monte Dalrymple	Date of order:	08-Oct-2014
Payment terms:		nct 30 days	Invoice date:	31-Oct-2014
Method of shipment:		USPS Priority Mail		
Invoice number:		2014-007		
ITEM NO.	QTY.	DESCRIPTION	PRICE EACH	AMOUNT
1	10	Deposition preparation, review of transcript, review of Holland rebuttal	105.00	525.00
2		Notary fee (deposition transcript)	10.00	5.00
3		Postage (return CDs, USB drive, and notarized deposition review)	5.00	2.50
Sub-total:				532.50
Tax:				0.00
Shipping & handling:				0.00
Previous amount owing:				0.00
Credit:				(0.00)
Total:				532.50

ORIGINAL

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
Sarah H. Arnett, ISB No. 6545  
PARSONS BEHLE & LATIMER  
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Email: JZarian@parsonsbehle.com  
KLuvai@parsonsbehle.com  
SArnett@parsonsbehle.com

*Attorneys for Plaintiff and Counterdefendant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED \_\_\_\_\_ P.M. 5

FEB 18 2015

CHRISTOPHER D. RICH, Clerk  
By KYLE MEREDITH  
DEPUTY

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM NO. 2 IN SUPPORT  
OF AMERICAN SEMICONDUCTOR,  
INC.'S OBJECTION AND MOTION  
TO DISALLOW ZILOG, INC.'S  
REQUEST FOR FEES AND COSTS  
RE: RULE 37**

TR

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following Memorandum in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Defendant Zilog, Inc.'s Request for Fees and Costs (the "Motion"), to the extent that Motion is predicated on Rule 37 of the Idaho Rules of Civil Procedure.

In so doing, and to the extent necessary, ASI incorporates by reference as if fully set forth herein any relevant arguments made as part of its Memorandum No. 1 in Support of ASI's Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs Re: Rule 11 (filed concurrently herewith).

### **BACKGROUND**

On April 18, 2014, Zilog filed a motion to compel in which it sought, amongst other relief, an order compelling ASI to describe, with reasonable particularity, each of the trade secrets at issue in this action as part of Zilog's Interrogatory No. 3. Zarian Decl., ¶ 37. Zilog did so without acknowledging that ASI had previously disclosed information expressly clarifying the nature and scope of the claimed trade secrets in answer to the related Interrogatory No. 11 served the previous day, April 17, 2014. *Id.*, at ¶ 38. In that April 17, 2014 disclosure, ASI disclosed, in essence, that its trade secret comprised the information, design work, verification, layout, specifications and inputs comprising ASI's implementation of the PS10 design concept as show in the high level block diagram Bates labeled as ASI0002685. *Id.*, at ¶ 39. ASI highlighted this additional detail in its articulation of the protectable trade secrets as part of its opposition to the motion to compel which was filed on April 28, 2014. *Id.*, at ¶ 40.

The Court held a hearing on Zilog's motion to compel on May 2, 2014. *Id.*, at ¶ 41. After considering arguments from counsel, the Court ruled as follows:

This with regard to Zilog's request for ASI to describe, with particularity, the trade secrets at issue here, ASI responds that it has provided that detail, and Zilog did not attempt to meet and confer on the issue.

ASI claims that the advanced engineering design comprising a microcontroller integrated circuit, as identified in [ASI0002685], is the trade secret in this case.

In light of this further disclosure, I'll grant the motion to compel as it relates to the description of trade secrets, et cetera, involved in the case, *to the extent that further documents exist which are responsive to Zilog's discovery request.*

Luvai Decl., Ex. D, Hearing Transcript, May 2, 2014, at 75:14-76:2 (emphasis added). The Court subsequently entered an order consistent with the foregoing ruling. *See Order Regarding Zilog, Inc.'s Motion to Compel* (entered, Jun. 18, 2014), at p. 2 ("With respect to Interrogatory No. 3 of Zilog's First Set of Discovery Requests to Plaintiff, ASI shall describe, with reasonable specificity, each and every trade secret or trade secrets owned by ASI that are the subject of this action, *to the extent not previously disclosed.*") (emphasis added).

Accordingly, as of June 18, 2014, ASI reasonably believed that it had articulated its claimed trade secret and that it was being ordered to supplement its discovery disclosures to the extent that (a) additional documents responsive to Zilog's discovery request concerning the articulation of the claimed trade secret exist or (b) there existed aspects of ASI's trade secrets, other than those previously disclosed. *Id.*, at ¶ 43.

Even though ASI believed that it had disclosed its asserted trade secret with reasonable specificity as of the May 2, 2014 hearing, *Id.*, at ¶ 44, it nevertheless provided a narrative description of the same asserted trade secret as:

[T]he PS10 ASIC microcontroller design that includes the compilation of various elements depicted in the block diagram Bates labeled as ASI002685 and related know how and reflects an advanced .13 micron technology node. This advanced

microcontroller design was beyond the design engineering capabilities of Zilog and its affiliates. Furthermore, this advanced microcontroller design and associated know how was not generally known in the industry or readily ascertainable by proper means by Zilog, and knowledge thereof allowed Zilog to obtain actual or potential economic value from its disclosure or use. At all relevant times, ASI's trade secrets at issue were the subject of efforts that were reasonable under the circumstances to maintain its secrecy.

As depicted in the aforementioned block diagram, ASI's trade secrets include the selection, compilation and integration of the core, components and peripheral cells shown and labeled in the diagram as: (a) 8051 CISC CPU; (b) OCD; (c) Internal & Crystal Osc.; (d) USB FS/LS 1.0 PHY; (e) Reset Control; (f) Watch-Dog Timer; (g) RC Osc; (h) RTC; (i) Multi-Channel Timers – X3; (j) Uart 12C/ESPI; (k) Temp Sensor; (l) 6-Bit ADC; (m) 3 x 16bit Enhanced Timer; (n) I/O Pads; (o) Internal Bus; (p) Interrupt Controller; (q) 4kB Register File; and (r) 2kb ROM + 96KB SRAM. The advanced design of the PS10 ASIC microcontroller is fully documented in the over 73,000 "native" design records produced by ASI on May 23, 2014, including the specific software, tools, design files, devices, vendor identification, techniques, processes and methods utilized by ASI in connection with the PS10 ASIC microcontroller design.

American Semiconductor, Inc.'s *Second* Supplemental Response to Zilog, Inc.'s Interrogatories (Nos. 1-3). In light of the foregoing, ASI reasonably believed that it was in full compliance with the June 18, 2014 order on Zilog's motion to compel given that it had previously disclosed all of its trade secrets at issue in this litigation. *Id.*, at ¶ 45.

Therefore, ASI was genuinely surprised when Zilog filed a motion for sanctions on July 3, 2014 wherein it complained that ASI had supposedly failed to comply with the June 18, 2014 discovery order. *Id.*, at ¶ 46. This was particularly so given that it was apparent that Zilog did not fully appreciate that ASI's claimed trade secret was *not* the block diagram itself as it erroneously assumed but the PS10 design concept, including the selection, compilation and integration of the various components identified in the block diagram. *Id.* In support of its position that a design concept as a whole or a system architectures can be protectable as trade

secrets provided such ideas have independent economic value and are shielded from public disclosure, ASI relied upon *Altavion, Inc. v. Konica Minolta Systems Laboratory*, 226 Cal.App.4th 26 (2014), a case that was discussed in detail in ASI's opposition to Zilog's earlier motion for Rule 11 sanctions.

The Court held a hearing on Zilog's motion for sanctions on July 18, 2014. *Id.*, at ¶ 47. Given its reasonable belief that it had disclosed its claimed trade secret comprising the PS10 design concept, ASI was caught off guard by the Court's pronouncement from the bench to the effect that "[p]rior to Zilog's motion to compel, ASI had not disclosed its trade secret with reasonable specificity. That was the reason the court granted Zilog's motion to compel. Further, the Court finds that converting the same information from the format of a block diagram into a narrative format does not comply with this Court's order filed June 18th, 2014." Luvai Decl., Ex. E, Hearing Transcript, July 18, 2014, at 46:14-46:21.

The Court then went on to find that ASI was in violation of the June 18, 2014 discovery order and, as a sanction, ordered thus: ASI "must supplement its response to Interrogatory No. 3 of Zilog's first set of discovery requests to plaintiff. ASI shall describe with reasonable specificity each and every trade secret or trade secrets owned by ASI which are the subject of this action. Such supplementation shall occur by Monday, August 4th, 2014, whether or not ASI has engaged or will engage an expert on the issue." *Id.* at 48:20-48:21; 49:25-50:8.

Again, given its abiding belief that that it had fully described its claimed trade secret as comprising the protectable and proprietary PS10 design, ASI was forced to re-evaluate its options in light of the Court's apparent rejection of its assertion that the PS10 design was protectable as a design concept. *See* Zarian Decl., ¶ 48. This was notwithstanding the instructive



*Altavion* decision that stands for the proposition that design concepts and ideas can be protected as trade secrets provided that they are treated as such.

Thus, in the interest of moving the case towards a speedy resolution and conserving its finite resources, ASI elected to move to voluntarily dismiss the trade secret misappropriation and related claims. *Id.*, at ¶¶. 50-51. Therefore, having gone out of its way to streamline this case, ASI finds it curious that Zilog now seeks an unspecified amount of money (in excess of \$1 million supposedly) as a "sanction" for its efforts in that regard.

Under these circumstances, it is patently clear that Zilog's request for sanctions under Rule 37 is a gross overreach. As a result, the Court should exercise its discretion in denying the unwarranted and extraordinary relief Zilog seeks.

### **LEGAL STANDARD**

Here, Zilog invokes Rule 37(b) of the Idaho Rules of Civil as the basis for seeking fees and costs for alleged discovery violations on ASI's part. *See e.g.* Memorandum, at p. 10 (contending that "ASI's violation of not one, but two of the Court's discovery orders warrants an award of costs and attorney fees under Rule 37(b)."). Rule 37(b) provides as follows:

#### **(b) Failure to Comply With Discovery Order--Sanctions**

(1) *Sanctions by Court in District Where Deposition is Taken.* If a deponent fails to be sworn or affirmed or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by Court in Which Action is Pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring the party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that the party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

I.R.C.P. 37(b).

### **ARGUMENT**

#### **A. ZILOG'S REQUEST FOR FEES AND COSTS BASED ON THE RECORD BEFORE THE COURT IS UNWARRANTED**

##### **1. ASI Reasonably Believed that it was in Compliance with June 18, 2014 Discovery Order.**

As previously noted, as of the May 2, 2014 hearing on Zilog's motion to compel, ASI had disclosed the essence of its asserted trade secret as comprising the PS10 design concept,

specifically, the information, design work, verification, layout, specifications and inputs comprising ASI's implementation of the PS10 design concept as show in the high level block diagram Bates labeled as ASI0002685. Accordingly, when ASI reviewed the June 18, 2014 order on Zilog's motion to compel, it understood the Court to order that "describe, with reasonable specificity, each and every trade secret or trade secrets owned by ASI that are the subject of this action, *to the extent not previously disclosed.*"

In sum, ASI understood that it was ordered to describe its asserted trade secrets to the extent that it was asserting any trade secrets beyond the PS10 design concept as described above (and further clarified in subsequent discovery responses). Despite concluding, and reasonably so, that it had described the trade secret it sought to enforce in this action, ASI further described that asserted trade secret in narrative form as a means of providing further clarity, if needed. Thus, under the circumstances, and in reliance on authorities such as *Altavion*, ASI believed that it had described its trade secret comprising its implementation of the PS10 concept with reasonable specificity, and was thus, at the very least, in substantial compliance with the June 18, 2014 order.

ASI appreciates that the Court stated at the subsequent hearing on Zilog's motion for sanctions to the effect that ASI was in violation of the June 18, 2014 order. However, ASI respectfully submits that any such violation was not intentional and was informed by its understanding of the June 18, 2014 order. Therefore, because ASI's conduct was not properly sanctionable, Zilog is not entitled to any award of fees and costs.

**2. ASI's Opposition to the Zilog's Motion for Sanctions under Rule 37 was Substantially Justified and an Award of Expenses would be Unjust.**

Under the circumstances, as summarized above, ASI reasonably believed that it had fulfilled its discovery obligations in terms of disclosing the nature and scope of its asserted trade

secret in its implementation of the PS10 design concept. Again, in reliance on legal authorities providing for protection for design concepts and/or system architectures provided such information has economic value and is shielded from disclosure, ASI opposed Zilog's motion for sanctions. The fact that the Court ultimately sided with Zilog on that issue does not mean that ASI's arguments were not asserted in good faith or were wholly lacking in factual or legal support.

Therefore, not only were ASI's actions in response to June 18, 2014 order defensible but so were its positions with regard to Zilog's motion for sanctions. In sum, because ASI's positions in discovery were defensible and advanced in good faith, Zilog is not entitled to an award of fees and costs as a sanction against ASI.

**B. ZILOG HAS FAILED TO SPECIFY THE AMOUNTS INCURRED IN OBTAINING THE DISCOVERY ORDER THUS ITS REQUEST FOR FEES AND COSTS SHOULD BE DENIED AS DEFECTIVE.**


Besides not being entitled to fees and costs on the merits of its motion for sanctions under Rule 37, Zilog has failed to apportion any fees and costs incurred prosecuting its motion for sanctions. Zilog provides no basis whatsoever for its unprecedented request for all fees and costs incurred in its defense of this action. In truth, all that Zilog would be entitled to is fees and costs incurred in obtaining the discovery order at issue. *See Morgan v. Demos*, 156 Idaho 182, 188-89 (2014) (interpreting Rule 37(a)(4) as allowing for recovery of reasonable expenses in obtaining the order). Here, Zilog has not segregated such fees and costs, and is clearly not entitled to an award of over \$1 million even if the Court were to find a sanction against ASI was warranted.

**CONCLUSION**

For the foregoing reasons, the Court should deny Zilog's request for costs and fees under Rule 37 in its entirety.

DATED this 18th day of February, 2015.

PARSONS BEHLE & LATIMER

By  \_\_\_\_\_

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED \_\_\_\_\_ P.M. 5

FEB 18 2015

CHRISTOPHER D. RICH, Clerk  
By KYLE MEREDITH  
DEPUTY

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM NO. 3 IN SUPPORT  
OF AMERICAN SEMICONDUCTOR,  
INC.'S OBJECTION AND MOTION  
TO DISALLOW ZILOG, INC.'S  
REQUEST FOR FEES AND COSTS  
RE: RULE 41**

TR

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following Memorandum in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Defendant Zilog, Inc.'s Request for Fees and Costs (the "Motion"), to the extent that Motion is predicated on Rule 41 of the Idaho Rules of Civil Procedure.

In so doing, and to the extent necessary, ASI incorporates by reference as if fully set forth herein any relevant arguments made as part of the Memorandum No. 1 in Support of ASI's Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs Re: Rule 11 (filed concurrently herewith) and the Memorandum No. 2 in Support of ASI's Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs Re: Rule 37 (filed concurrently herewith).

### **BACKGROUND**

The facts and circumstances set forth in the above-referenced memoranda in opposition to Zilog's request for fees and costs under Rule 11 and under Rule 37 provide a backdrop for ASI's considered decision in taking steps to streamline this action for trial by filing its Motion for Voluntary Dismissal of its Trade Secret Misappropriation, Improper Appropriation of Name, Consumer Protection Act and Injunctive Relief (filed, Aug. 19, 2014).

Further, the accompanying supporting declarations of John Zarian and Doug Hackler, both filed concurrently herewith, also address the circumstances that led to ASI's decision to voluntarily dismiss its trade secrets claim. *See e.g.* Declaration of Doug Hackler in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs, at ¶ 28 (stating that despite ASI's belief in the protectability of the asserted trade secret, its decision to dismiss that claim was driven, in large part, by the finite nature of resources available to it, as a small company).



### LEGAL STANDARD

The provision under Rule 41 that Zilog invokes as the basis for its request for attorneys' fees and costs reads as follows:

Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

I.R.C.P. 41(a)(2).

The decision of whether to impose "terms and conditions" is left to the sound discretion of the trial court. *Jones v. Berezay*, 120 Idaho 332, 336 (1991) ("The trial court is free to either grant or not grant costs and attorney fees on dismissal."). Further, "[t]he award of costs and attorney fees, or either, is not a prerequisite to an order granting voluntary dismissal pursuant to I.R.C.P. *Id.*

### ARGUMENT

#### **A. ZILOG IS NOT ENTITLED TO FEES AND COSTS UNDER RULE 41**

The prevailing circumstances set forth in the supporting declarations and other papers referenced above strongly counsel against an award of fees and costs under Rule 41. As established in the foregoing papers, ASI asserted the misappropriation of trade secrets claim in good faith and was driven by a desire to protect proprietary information, including trade secrets that were developed by ASI through a substantial investment in time, effort and money. That

ASI elected to streamline this action in the hopes that doing so would lead to faster resolution of the case is no reason to "punish" ASI for doing so. Accordingly, Zilog is not entitled to fees and costs under Rule 41(a).

**B. ZILOG HAS FAILED TO SPECIFY THE AMOUNTS IT SEEKS AND THUS THIS REQUEST FOR FEES AND COSTS UNDER RULE 41 SHOULD BE DENIED ON THAT BASIS.**

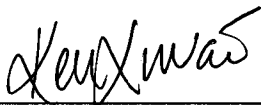
Besides not being entitled to fees and costs on the merits of its motion for sanctions under Rule 41, Zilog has failed to apportion any fees and costs incurred prosecuting its motion for sanctions. Zilog provides no basis for its unprecedented request for all fees and costs incurred in its defense of this action. Here, Zilog has not segregated such fees and costs, and is clearly not entitled to an award of nearly \$1 million even if the Court were to find a sanction against ASI was somehow warranted under Rule 41.

**CONCLUSION**

For the foregoing reasons, the Court should deny Zilog's request for fees and costs under Rule 41 in its entirety.

DATED this 18th day of February, 2015.

PARSONS BEHLE & LATIMER

By  \_\_\_\_\_

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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Kennedy K. Luvai

FEB 18 2015

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By KYLE MEREDITH  
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM NO. 4 IN SUPPORT  
OF AMERICAN SEMICONDUCTOR,  
INC.'S OBJECTION AND MOTION  
TO DISALLOW ZILOG, INC.'S  
REQUEST FOR FEES AND COSTS  
RE: I.C. § 12-121**

TR

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following Memorandum in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Defendant Zilog, Inc.'s Request for Fees and Costs (the "Motion"), to the extent that Motion is predicated on Idaho Code section 12-121.

In so doing, and to the extent necessary, ASI incorporates by reference as if fully set forth herein, any relevant arguments made as part of the Memorandum No. 1 in Support of ASI's Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs Re: Rule 11 (filed concurrently herewith). ASI further relies upon and incorporates any relevant statements as set forth in the supporting declarations of John N. Zarian and Doug Hackler, filed concurrently herewith.

### **LEGAL STANDARDS**

Idaho Code § 12-121 provides as follows:

In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties, provided that this section shall not alter, repeal or amend any statute which otherwise provides for the award of attorney's fees. The term "party" or "parties" is defined to include any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

I.C. § 12-121.

The Idaho Rules of Civil Procedure provide that "attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation." I.R.C.P. 54(e)(1). The rules further provide that "[w]hen the court awards attorney fees pursuant to section 12-121, Idaho Code, it shall make a written finding, either in the award or in a separate document, as to the basis and reasons for awarding such attorney fees." I.R.C.P. 54(e)(2).

Trial courts have discretion to apportion attorneys' fees as appropriate for elements of the case that are frivolous, unreasonable, and without foundation. *Idaho Military Historical Society, Inc. v.*

*Maslen*, 156 Idaho 624, 632 (2014). However, a claim is not frivolous or groundless merely because the plaintiff does not prevail. *Associates Northwest, Inc. v. Beets*, 112 Idaho 603, 605 (Ct. App. 1987).

Where a claim involves novel legal questions, attorney's fees should not be granted under § 12-121. *Campbell v. Kildew*, 141 Idaho 640, 651, 115 P.3d 731, 742 (2005). Where questions of law are raised, attorney fees should be awarded only if the "position advocated by the nonprevailing party is plainly fallacious and, therefore, not fairly debatable." *Associates Northwest*, 112 Idaho at 605. Where mixed issues of law and fact are presented, attorney fees are inappropriate if there is evidence adduced which is sufficient, even if disputed, to establish a fairly debatable issue under the legal theories advanced by the plaintiff. *Id.*

### **ARGUMENT**

#### **A. ZILOG IS NOT ENTITLED TO FEES AND COSTS UNDER I.C. § 12-121**

As a threshold matter, the only claim that Zilog incorrectly argues was brought and pursued "frivolously, unreasonably or without foundation" is the trade secret misappropriation claim. However, as fully set forth in ASI's memorandum in opposition to Zilog's Rule 11 motion and in the supporting declarations, ASI brought the trade secret claim after having conducted a thorough and extensive investigation and inquiry. Also, as further set forth in those papers, SI then pursued the trade secret claim in good faith, with its overriding objective being to vindicate its legitimate and valuable trade secret rights.

In asserting the trade secret misappropriation claim, ASI presented a host of mixed questions of law and fact sufficient to establish issues that are fairly debatable under its legal theories. Accordingly, a fee award to Zilog under such circumstances is inappropriate. *Associates Northwest*, 112 Idaho at 605. The fact that (a) the Court felt that ASI should describe its asserted trade secret in more further detail, notwithstanding ASI's reasonable belief that it had already done so, or (b) ASI's subsequent

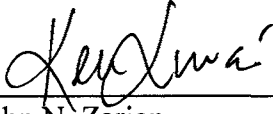
voluntary dismissal of that claim, simply cannot be taken to mean that ASI's institution and pursuit of the trade secret misappropriation claim was "frivolous or groundless." The facts and circumstances set forth in ASI's memorandum in opposition to Zilog's Rule 11 motion establish the good faith basis of ASI's actions in that regard.

### **CONCLUSION**

For the foregoing reasons, the Court should deny Zilog's request for fees and costs under I.C. § 12-121 in its entirety.

DATED this 18th day of February, 2015.

PARSONS BEHLE & LATIMER

By   
\_\_\_\_\_  
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

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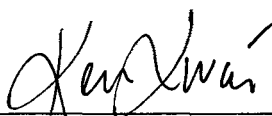
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
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Defendants

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 5

FEB 18 2015

CHRISTOPHER D. RICH, Clerk  
By KYLE MEREDITH  
DEPUTY

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**MEMORANDUM NO. 5 IN SUPPORT  
OF AMERICAN SEMICONDUCTOR,  
INC.'S OBJECTION AND MOTION  
TO DISALLOW ZILOG, INC.'S  
REQUEST FOR FEES AND COSTS  
RE: I.C. § 12-120(3)**

TK

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following Memorandum in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Defendant Zilog, Inc.'s Request for Fees and Costs (the "Motion"), to the extent that Motion is predicated on Idaho Code section 12-120(3).

### LEGAL STANDARDS

Idaho Code § 12-120(3) provides as follows:

In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

I.C. § 12-120(3).

Awarding a prevailing party attorney's fees under Idaho Code § 12-120(3) may be proper only when there is a contract or other "commercial transaction," which is integral to the claim at issue and constitutes the basis upon which the prevailing party has attempted to recover in the action. *See Beco Construction Co. v. J-U-B Engineers*, 145 Idaho 719, 726 (2008) (citing *Blimka v. My Web Wholesaler, LLC*, 143 Idaho 723, 728 (2007)).

However, the Idaho Supreme Court has repeatedly limited §12-120(3)'s application to claims for recovery on contracts and other "commercial transactions" *between the prevailing party and the party from whom the prevailing party seeks fees*. *See Soignier v. Fletcher*, 151 Idaho 322, 326, 256 P.3d 730, 734 (2011) (holding that prevailing attorney in malpractice action

brought by beneficiary under will drafted by the attorney was not entitled to attorney's fees under I.C. § 12-120(3) because there was no commercial transaction between them which was the basis for the beneficiary's malpractice action); *Bybee v. Isaac*, 145 Idaho 251, 260-61 (2008) (holding purchaser of crop dusting business was not entitled to attorney's fees under I.C. § 12-120(3) as prevailing party against former owner's new employer on a claim for tortious interference with former owner's covenant not to compete because that claim arose solely in tort and did not involve any commercial transaction between the purchaser and new employer); *Syringa Networks, LLC v. Idaho Dept. of Administration*, 155 Idaho 55, 66(2013) (holding contractor who obtained bid for government contracted technology systems was not entitled to attorney's fees under § 12-120(3) as prevailing party in action for tortious interference with prospective economic advantage brought by subcontractor who participated in a competing bid because the claim was not based upon any transaction between those parties); *Beco Const. Co.*, 145 Idaho 719, 726-27 (2008) (holding project engineer who prevailed on general contractor's tortious interference with contract claim was not entitled to attorney's fees under I.C. § 12-120(3) because project engineer was not a stranger to the subject contract and, as such, there was no "independent commercial transaction" between the parties which was the subject of the tortious interference claim); *Thirsty's L.L.C. v. Tolerico*, 143 Idaho 48, 51 (2006) (in gas station seller's action for tortious interference with purchasing obligations to another supplier assumed by gas station purchaser, holding supplier was not entitled to attorney's fees under I.C. § 12-120(3) as prevailing party because the claim was not an action to recover on a contract or commercial transaction, between seller and supplier but, rather, an action arising strictly in tort).<sup>1</sup>

---

<sup>1</sup> Zilog highlights the Idaho Supreme Court's recent decision in *Taylor v. Riley*, 157 Idaho 323, 336 P.3d 256 (2014) (holding corporate attorney's provision of an opinion letter to majority shareholder, who was

## ARGUMENT

**A. ZILOG SIMPLY DISREGARDS BINDING CASE LAW IN ITS MISGUIDED PURSUIT FOR ATTORNEYS' FEES AND COSTS UNDER SECTION 12-120(3).**

Zilog acknowledges the foregoing authority requiring existence of a contract or other commercial transaction between the party seeking attorney's fees and the party from whom fees are sought. *See* Memo In Support of Zilog's Motion for Attorney's Fees and Costs at pp. 36-37. Zilog nevertheless disregards this established law by claiming entitlement to attorney's fees under § 12-120(3) without showing how ASI's claims against it were based upon the requisite contract or "commercial transaction" or even upon an alleged "commercial transaction" between them.

**B. ZILOG'S REQUEST UNDER SECTION 12-120(3) IS BASED ON A GROSS MISCHARACTERIZATION OF ASI'S CLAIMS.**

Instead, Zilog first mischaracterizes ASI's claims as seeking to recover against Zilog on the design engineering services *contract between Sage and Zilog*. As Zilog well knows, however, ASI was not a party to the contract between Sage and Zilog. Furthermore, ASI has neither claimed to be a party to the Sage-Zilog relationship nor sought recovery based upon any rights or obligations arising under that relationship or upon the manner in which the contract was performed. Therefore, Zilog's contract with Sage does not serve as the requisite independent commercial transaction *between ASI and Zilog* to bring ASI's action against Zilog within § 12-120(3)'s scope.

---

also former board chair and CEO, in connection with executing a contract for corporation to redeem shareholder's shares constituted the requisite commercial transaction to bring shareholder's legal malpractice claims within I.C. § 12-120(3)'s application); however, *Riley* does not in any way deviate from the foregoing authority or otherwise support Zilog's arguments with regard to § 12-120(3)'s application as between it and ASI.

Zilog next asserts the “commercial transaction” requirement is satisfied because ASI presented evidence of Zilog’s previous customer relationship with ASI. ASI’s evidence of Zilog having previously purchased outsourced design engineering services served only to prove ASI had a valid economic expectancy in entering another contract with Zilog to provide Roberts, Yearsley, and Tiffany’s design engineering services. That is, the evidence of ASI and Zilog’s prior (concluded) contractual relationship served to show Zilog’s status as a potential customer. But ASI’s claims against Zilog in this action did not seek recovery based upon any rights or obligations under the prior services contract, or for anything which occurred as part of performing that contract. Therefore, Zilog’s past customer relationship with ASI was not the basis, or gravamen, of ASI’s claims against Zilog as required for § 12-120(3) to apply. A concluded transaction, which no longer exists, cannot serve to bring ASI’s action against Zilog within § 12-120(3)’s scope. *See e.g. Syringa Networks, LLC*, 155 Idaho at 66 (emphasizing that whether or not “there may in the future have been commercial transactions between Quest and Syringa is not relevant to the award of attorney fees in this action”).

ASI’s claims in this case clearly all arose within a commercial context and the gravamen of its claims against Roberts, Yearsley, and Tiffany is the parties’ employment relationship, which is a “commercial transaction” under § 12-120(3). ASI’s claims against Zilog, however, were not to recover on any contract or other commercial transaction which existed (or allegedly existed) between them. Rather, ASI sought recovery against Zilog because a commercial transaction between ASI and Zilog should have taken place, but did not take place, because Zilog instead contracted with Sage thereby causing Roberts, Yearsley, and Tiffany to breach their duties not to compete with ASI. In other words, ASI has sought recovery against Zilog because Zilog’s tortious interference with the individual defendants’ non-compete agreements caused a

commercial transaction for design engineering services did not take place between ASI and Zilog.<sup>2</sup> For these reasons, ASI's tortious interference claim against Zilog was not based upon an existing contract or commercial transaction between them but upon Zilog's duty not to interfere with the individual defendants' contractual non-compete obligations to ASI – i.e. the claim arose solely in tort. Therefore, ASI's claim against Zilog falls squarely within the rule precluding recovery of attorney's fees under § 12-120(3) when the action for tortious interference is not based upon an independent "commercial transaction" between the parties. *See Bybee*, 145 Idaho at 260-61, 178 P.3d 625-26; *see also Syringa Networks, LLC*, 155 Idaho at 66, 305 P.3d at 510; *Beco Const. Co.*, 145 Idaho at 726, 184 P.3d at 851.<sup>3</sup>

In sum, Zilog has no basis to seek attorney's fees against ASI under § 12-120(3) and Zilog's attorney fee claim under that statute must be denied.

### CONCLUSION

For the foregoing reasons, the Court should deny Zilog's request for fees and costs under I.C. § 12-120(3) in its entirety.

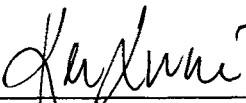
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<sup>2</sup> Undisputedly, Zilog was not a party to the individual defendants' employment relationship with ASI or to the ECA. Therefore, ASI and the individual defendants' contractual relationship does not constitute a contract or other "commercial transaction" between ASI and Zilog which had to exist for § 12-120(3) to apply.

<sup>3</sup> For these same reasons, ASI is not seeking attorney's fees against Sage under § 12-120(3).

DATED this 18th day of February, 2015.

PARSONS BEHLE & LATIMER

By \_\_\_\_\_

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

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Attorneys for Defendant Zilog, Inc.

NO \_\_\_\_\_ FILED  
A.M. 10 : 50 P.M. \_\_\_\_\_

FEB 19 2015

CHRISTOPHER D. RICH, Clerk  
By SANTIAGO BARRIOS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**SUPPLEMENTAL DECLARATION OF  
GERALD T. HUSCH IN SUPPORT OF  
MOTION FOR ATTORNEY FEES AND  
COSTS**

SAB

GERALD T. HUSCH declares and states as follows:

1. I am a shareholder with the law firm Moffatt, Thomas, Barrett, Rock & Fields, Chartered (“Moffatt Thomas”), and counsel of record for Defendant Zilog, Inc. (“Zilog”). I am making this declaration based upon my own personal knowledge.

2. This declaration is submitted in accordance with Rule 54 of the Idaho Rules of Civil Procedure in support of both Zilog’s Memorandum of Fees and Costs and Zilog’s Motion for Costs and Attorney Fees, for the purpose of including in the record portions of the transcripts of the trial and post-trial hearing of January 30, 2015, that were not available at the time of Zilog’s filing of Zilog’s Memorandum of Fees and Costs and Zilog’s Motion for Costs and Attorney Fees.

3. In support of Zilog’s request for sanctions against plaintiff’s attorneys, Zilog made the following arguments, (a) – (d). Exhibits A through C are partial transcripts of proceedings in this action that contain information relevant to those arguments that have been highlighted for the convenience of the Court and counsel:

(a) Counsel for American Semiconductor, Inc. (“ASI”) violated Idaho Rule of Professional Conduct 3.4(f) by requesting persons other than his client to refrain from voluntarily giving information to Sage and Zilog in this action.

Attached hereto as **Exhibit A** are true and correct copies of selected excerpts from the Reporter’s Partial Transcript of Proceedings of January 7, 2015 (“1/7/2015 Reporter’s Transcript”) of the testimony of Mr. Douglas R. Hackler, prepared by Susan M. Wolf, RPR. Mr. Hackler testified that ASI had sent Evelyn Perryman a proposed settlement agreement, that the agreement had been drafted and approved by ASI’s counsel, and that Mr. Hackler sent the proposed settlement agreement to

Ms. Perryman at the instruction of ASI's counsel. *See Exhibit A* (1/7/2015 Reporter's Transcript), 4:16-22; 6:22 – 7:14; 7:21 – 8:2; 8:10 – 9:2, 11:2-6; 14:4-12; 79:7 – 80:11; 81:8 – 82:3. Mr. Hackler also testified that ASI had sent Russell Lloyd a proposed settlement agreement, that the agreement had been drafted and approved by ASI's counsel, and that Mr. Hackler sent the proposed settlement agreement to Mr. Lloyd at the instruction of ASI's counsel. *See Exhibit A* (1/7/2015 Reporter's Transcript), 10:24 – 11:6; 79:7 – 80:11; 81:8 – 82:3.

(b) ASI's counsel acted improperly in overtly seeking to bias the jury against Zilog by depicting ASI as a small family business and Zilog as a huge corporation.

Attached hereto as **Exhibit B** are true and correct copies of excerpts from the Reporter's Partial Transcript of Proceedings of the Opening/Closing Remarks of Mr. John Zarian of January 5, 2015 and January 15, 2015 ("Opening/Closing Remarks of Zarian"), prepared by Susan M. Wolf, RPR. *See Exhibit B* (Opening/Closing Remarks of Zarian), 3:11-21; 4:10-14; 5:16-18; 6:8 – 7:2.

(c) ASI's counsel repeatedly portrayed ASI as a "family" business, even though Doug Hackler testified that ASI had minority shareholders who were not members of his or his wife's family.

*See Exhibit A* (1/7/2015 Reporter's Transcript), 64:24 – 66:14.

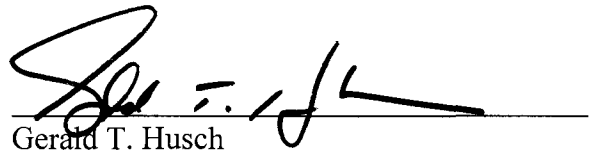
(d) ASI's counsel attempted to improperly introduce evidence during trial regarding settlement negotiations between ASI and Zilog, before the jury, in clear violation of Rule 408 of the Idaho Rules of Evidence and the Court's established procedure for dealing with foreseeable evidentiary issues outside the presence of the jury.

*See Exhibit A* (1/7/2015 Reporter's Transcript), 87:8 – 89:4.

(e) ASI's counsel attempted to bring clearly inadmissible evidence of jurors' statements before the Court for an improper purpose, and in violation of Idaho Rule of Evidence 606(b), under the guise of clarifying rather than impeaching the jury verdict.

Attached hereto as **Exhibit C** are true and correct copies of selected excerpts from the Reporter's Transcript of Requested Proceedings, prepared by Susan M. Wolf, RPR, of the January 30, 2015, hearing held before Judge Neville. *See Exhibit C* (1/30/2015 Reporter's Transcript of Requested Proceedings), 111:7 – 113:8; 114:20 – 115:11; 122:17 – 124:6; 124:14 – 125:16.

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

  
Gerald T. Husch

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 2015, I caused a true and correct copy of the foregoing **SUPPLEMENTAL DECLARATION OF GERALD T. HUSCH IN SUPPORT OF MOTION FOR ATTORNEY FEES AND COSTS** to be served by the method indicated below, and addressed to the following:

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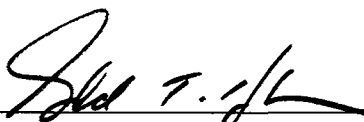
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Gerald T. Husch

# EXHIBIT A

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., ) Case CVOC-2011-0023344  
                                  ) )  
                          Plaintiff, ) )  
                                  ) )  
vs.                                  ) )  
                                  ) )  
SAGE SILICON, et al,              ) )  
                                  ) )  
                          Defendants. ) )  
\_\_\_\_\_ )

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

TESTIMONY OF MR. DOUGLAS R. HACKLER

January 7, 2015

Hon. THOMAS F. NEVILLE, District Court Judge

Reported by:  
Susan M. Wolf, RPR  
CSR No. 728

**COPY**

## A P P E A R A N C E S

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I N D E X

<u>Witness</u>	<u>Examination By</u>	<u>Page</u>
HACKLER, Douglas R.	CRX Contd by Mr. Cooper	4
	CRX by Mr. Husch	15
	RDX by Mr. Zarian	69

E X H I B I T S

<u>Exhibit</u>	<u>Description</u>	<u>Mark/Admit</u>
SAGE 1-AAAA	E. Perryman Settlement Agrmt	Prev/ 5
SAGE 1-VV	E-mail thread	Prev/ 75
ZILOG 2-JJ	Travel records for D. Hackler	Prev/ 64

1 BOISE, IDAHO

2 Wednesday, January 7, 2015, 10:08 a.m.

3  
4 (Start of requested portion.)

5  
6 DOUGLAS HACKLER,  
7 called as a witness, by and on behalf of the plaintiff,  
8 having been first duly sworn, was examined and testified  
9 as follows:

10  
11 CROSS-EXAMINATION (Cont'd)

12 BY MR. COOPER:

13 Q. Mr. Hackler, you have before you Exhibit  
14 1-AAAA.

15 A. Yes, sir; I do.

16 Q. Okay. That exhibit, did you, as CEO of ASI  
17 authorize the mailing of that memo and the attached  
18 agreement to Evelyn Perryman in December of 2012?

19 A. When this first came up yesterday, I wasn't  
20 sure exactly what I did. So, I reviewed my notes at the  
21 office last night, and found that I had -- I had mailed  
22 this to Evelyn Perryman, at the request of Mr. Zarian.

23 Q. Okay. And is this a true and correct copy of  
24 the memo and the attached memorandum that was mailed?

25 A. I didn't compare it side by side, but I -- it

1 looks to be the same.

2 Q. And it was mailed on letterhead of  
3 American Semiconductor; is that correct?

4 A. It was mailed on the letterhead as -- as  
5 shown here on the first page of the exhibit.

6 Q. Which is the letterhead of  
7 American Semiconductor --

8 A. Yes --

9 Q. -- correct?

10 A. -- it is.

11 MR. COOPER: We offer Exhibit 1-AAAA.

12 THE COURT: Objections previously noticed?

13 MR. ZARIAN: Yes. Thank you, Your Honor.

14 THE COURT: I'll preserve your record.

15 Position previously noted by Zilog?

16 MR. HUSCH: Yes, Your Honor.

17 THE COURT: Preserve the record there.

18 Ladies and gentlemen, I'm admitting  
19 Exhibit 1-AAAA for a limited purpose. You may consider  
20 it only for -- as it may show bias or prejudice by this  
21 witness, and not for whether any claims or counterclaims  
22 were valid or invalid.

23  
24 (Exhibit No. 1-AAAA admitted.)  
25

1 THE COURT: You may proceed.

2 MR. COOPER: Thank you, Your Honor.

3 Q. BY MR. COOPER: Mr. Hackler, did you have any  
4 conversations, either in person or by telephone, with  
5 Evelyn Perryman about this document before it was sent?

6 A. I -- I attempted to contact Ms. Perryman; she  
7 wouldn't return calls or -- or discuss this. So no,  
8 after mailing it, I never had any conversation with her  
9 about this.

10 Q. And you had no conversations with her about  
11 this before you sent it to her?

12 A. That's correct.

13 MR. COOPER: If we could have it projected,  
14 and paragraph three, on the second page.

15 THE COURT: Would it be page three?

16 MR. COOPER: Second page of the agreement,  
17 page three of the exhibit; that's -- that's correct.

18 Q. BY MR. COOPER: Mr. Hackler, is this the --  
19 paragraph three of the agreement that was proposed to  
20 Evelyn Perryman?

21 A. It is.

22 Q. Just to summarize, basically, what you were  
23 offering to do is to drop suits against Ms. Perryman if  
24 she would agree to cooperate with ASI in this litigation,  
25 and to not voluntarily cooperate with Sage or Zilog;

1 correct?

2 A. No. I don't -- I believe that misstates what  
3 we were trying to do with this.

4 Q. What were you trying to do?

5 A. When this was written, which I believe, if I  
6 recall from the first page, was late 2012, Mr. Zarian had  
7 been reviewing our case, and noted that Ms. Perryman  
8 hadn't been served, and -- and in my mind wasn't being  
9 sued, and wanted to clean up the case, and make it clear  
10 as to who was involved and who wasn't.

11 And so, he encouraged me to send this to her.  
12 Because she wasn't represented by Counsel, to the best of  
13 our knowledge, he thought it would be better just coming  
14 from -- from me, rather than from a lawyer.

15 Q. Did you think it was some advantage to you  
16 to get Evelyn Perryman to agree that she would not  
17 voluntarily cooperate with Sage or Zilog?

18 A. I -- I thought what would have been most  
19 beneficial to us was that it be clear that everybody  
20 agree to tell the truth.

21 Q. Why did you then ask her to not cooperate  
22 voluntarily with Sage or Zilog if that's all you were  
23 after?

24 A. I never asked that. This document was  
25 prepared by my attorney. My -- I was under the

1 impression it was a boilerplate kind of agreement, and  
2 that was standard language.

3 Q. How many contracts have you signed in your  
4 life?

5 A. I've signed numerous contracts.

6 Q. You ever see boilerplate like this?

7 A. I am pretty much unfamiliar with settlement  
8 agreements. So, my impression, from my attorneys, was  
9 this was standard.

10 Q. Do you think it's standard in a settlement  
11 agreement to say, in no event shall Perryman cooperate  
12 voluntarily with Sage or Zilog in pursuing or defending  
13 any claim against ASI?

14 MR. ZARIAN: Objection --

15 THE WITNESS: I --

16 MR. ZARIAN: -- foundation, Your Honor.

17 THE COURT: I'll overrule.

18 You may respond, sir.

19 THE WITNESS: I'm sorry. Can you repeat the  
20 question?

21 MR. COOPER: Could you read it back, please?

22  
23 (Requested portion read back.)

24  
25 THE WITNESS: My impression was this was

1 standard language that Mr. Zarian would have used in --  
2 in any type of settlement agreement like this.

3 Q. BY MR. COOPER: The only consideration that  
4 was being offered here is to drop the lawsuit against  
5 Perryman; correct?

6 A. To the best of my knowledgement -- knowledge,  
7 we never planned, never tried, never attempted to sue  
8 Ms. Perryman.

9 Q. Ms. Perryman was named in the heading of the  
10 lawsuit, wasn't she?

11 A. I think that she may have been listed there  
12 originally, as part of -- just because she was a member  
13 of Sage, but to -- to the best of my knowledge, she was  
14 never served. And, certainly, we decided when we went to  
15 pursue Mr. Yearsley, Mr. Roberts, and Mr. Tiffany that  
16 she hadn't done the same things they did. So, we didn't  
17 feel that -- that she should be sued.

18 Q. Well, I'm having difficulty here. You named  
19 her in the suit; correct?

20 A. I don't believe we did.

21 Q. She's not on the heading?

22 A. In my understanding, the people we sue --  
23 sued were the people we serve -- served, and -- and that  
24 didn't include Ms. Perryman.

25 MR. COOPER: May the witness be handed the

1 Complaint in this action; is that possible?

2 THE COURT: I have Court File No. 20; I do  
3 not have Court Files Nos. 1 through 19 here in the  
4 courtroom. I have plenty of other documents, but I don't  
5 have -- so, I -- yeah.

6 I'm sending Madame Clerk into chambers to try  
7 to find Court File No. 1.

8 Q. BY MR. COOPER: Before we go to all this  
9 trouble, rethink; do you agree that Evelyn Perryman was a  
10 named defendant in the original Complaint that was filed?

11 A. Definition of named defendant, I'm not sure.  
12 I know that she was a member of Sage, and Sage was a --  
13 was a -- a party that we -- we served.

14 Q. I'm talking about was her name in the  
15 heading, sir?

16 A. Heading of -- of what, sir?

17 Q. Of the Complaint.

18 A. I'd have to see it to review. I haven't -- I  
19 haven't seen the Complaint in some time. She -- her --  
20 her name may have been on there, I -- I don't know.

21 Q. Well, I thought you said that you were trying  
22 to clean things up by getting rid of some of these people  
23 that were named but not served; did I misunderstand?

24 A. I think you did. I -- I said that my  
25 attorney suggested that we should clean things up by



1 putting in place this type of agreement with  
2 Ms. Perryman.

3 Q. Did you send this same letter to Russ Lloyd?

4 A. In reviewing the files last night, I found  
5 that Mr. Zarian had requested that I send the same -- the  
6 same letter to Mr. Lloyd and to Ms. Perryman.

7 Q. Was Russ Lloyd employed by ASI at the time  
8 you sent the letter and the agreement?

9 A. I don't believe so. I believe -- I believe,  
10 at that time, he had -- he had resigned from ASI and gone  
11 to work for Micron.

12 Q. The best I can do at this moment, without  
13 having people bring things from downstairs, is I have a  
14 copy of the original Complaint that was filed. It shows  
15 an original, it has a date stamp, it's on a computer  
16 image.

17 MR. COOPER: Do you agree that that is the  
18 first Complaint that was filed?

19 MR. ZARIAN: Well, I didn't file this  
20 Complaint. It -- it does look like the first page of a  
21 complaint filed, for the record, on December 2, 2011, is  
22 what is shown. That is there.

23 THE COURT: So, that's a yes?

24 MR. ZARIAN: I -- let -- let me see the  
25 title. Yeah. It does look like the original Complaint,

1           A.    Not because of any issues as an individual  
2 employee, or -- or -- or a past employee, or -- or  
3 otherwise related to ASI.

4           Q.    So, why did you think it was necessary to  
5 file -- or to send an agreement to her, asking that she  
6 dismiss -- that in consideration for dismissing all  
7 claims against her, that she would agree not to cooperate  
8 voluntarily with Sage or Zilog?

9           A.    At that time, Mr. Zarian instructed me it  
10 would clarify the issue of who was actually being sued.  
11 And I -- I would guess that his intention would be to  
12 avoid this kind of discussion.

13          Q.    In your world, do you think it was  
14 intimidating to people like Perryman and Lloyd to have  
15 someone send an agreement to them that says, if you will  
16 not cooperate voluntarily with Sage or Zilog, I'll not  
17 pursue you?

18          A.    No, sir. I don't believe that's the way this  
19 agreement would have been received or -- or understood.

20               MR. COOPER: Thank you. No further  
21 questions.

22               THE COURT: Cross-examination.

23    ///

24    ///

25    ///

1 documents that ASI has regarding any flight, or air  
2 travel, or trip taken by you from Boise, Idaho to  
3 San Jose at any time between June 1, 2010 and  
4 May 1, 2000 -- excuse me -- June 1, 2009 and May 1, 2010?

5 A. It appears comprehensive to me.

6 Q. Okay.

7 MR. HUSCH: Your Honor, we would move the  
8 admission of Exhibit 2-JJ.

9 THE COURT: Is there objection?

10 MR. ZARIAN: No, Your Honor.

11 MR. COOPER: No objection, Your Honor.

12 THE COURT: Okay.

13 I'll admit Zilog defendants Exhibit 2-JJ.

14  
15 (Zilog Exhibit No. 2-JJ admitted.)

16  
17 Q. BY MR. HUSCH: In all these times that you --

18 MR. HUSCH: Thank you, Your Honor.

19 Q. BY MR. HUSCH: In all these times that you  
20 flew from Boise to San Jose, you never personally stopped  
21 in to see Mr. Staab, in his offices, to market ASI's  
22 services to him, did you?

23 A. No, sir; I did not.

24 Q. Now, you, I think, indicated that you and  
25 your wife, Loralie Hackler, are shareholders of

1 American Semiconductor?

2 A. We are two of the shareholders; yes, sir.

3 Q. Okay. You own stock in the company, in other  
4 words?

5 A. We do.

6 Q. It makes you the owners?

7 A. We are -- we are the majority stockholders;  
8 yes, sir.

9 Q. Are there any other family members who are  
10 shareholders or owners of stock in ASI?

11 A. No, there are not.

12 Q. Okay. So, you and your wife have people  
13 outside of your family that own part of your company; is  
14 that correct?

15 A. We have a few minority investors; yes, sir.

16 Q. Okay. Have you ever personally signed an  
17 Employee Confidentiality Agreement like the type that  
18 we've been talking about in this case, that Mr. Lloyd,  
19 and Mr. Yearsley, and Mr. Tiffany, and Mr. Roberts  
20 signed?

21 A. I have.

22 Q. When did you do that?

23 A. Generally each time I went to work for -- for  
24 any of the semiconductor companies that I worked for  
25 during my experience in the industry.

1 Q. No. I'm talking about one that's the same  
2 form as the Employee Confidentiality Agreement that those  
3 individuals signed; did you ever sign ASI's form Employee  
4 Confidentiality Agreement?

5 A. I did not prepare a document for myself to  
6 sign; no, sir.

7 Q. Okay. And you didn't sign such a document?

8 A. No, sir. I'm essentially the president and  
9 CEO of the company. It would be making an agreement with  
10 myself.

11 Q. Well, you just said you had minority  
12 shareholders though; correct?

13 A. We have about 11 percent of the company that  
14 are owned by minority shareholders; yes, sir.

15 Q. Okay. And going back to Exhibit 2-JJ,  
16 does -- does your wife -- is that your wife,  
17 Loralie Hackler's signature after the word manager?

18 A. Yes, it is.

19 Q. So, she signs on behalf of the company,  
20 approving disbursements to you?

21 A. For my expense reports; she's our CFO, so she  
22 approves my travel, yes.

23 Q. She could have prepared an Employee  
24 Confidentiality Agreement for you to sign?

25 A. She could have.

1 some evidence that Mr. Lloyd had tried to sever his --  
2 his involvement with Sage. I don't know how, legally,  
3 that progressed. Evelyn Perryman, I didn't think she was  
4 involved with Sage, but then later on I saw that she  
5 eventually came to retain the same Counsel as Sage. So,  
6 I'm a little unclear.

7 MR. ZARIAN: Let's pull up 1-AAAA, if we can,  
8 and publish it, if we may, Your Honor. Page one, we're  
9 looking at the third recital from the bottom of the next  
10 page of the agreement, first page of the agreement.

11 Q. BY MR. ZARIAN: As of the time that this was  
12 sent -- by the way, do you remember sending this -- this  
13 agreement?

14 A. The -- this agreement was -- I mailed it, I  
15 think it was on December 27th.

16 Q. And you mailed it to whom?

17 A. Mailed it to Evelyn Perryman.

18 Q. Did you mail a similar agreement to anyone  
19 else?

20 A. Yes, sir. I -- I mailed an agreement exactly  
21 like this, with just the names being changed, to -- to  
22 Mr. Lloyd.

23 Q. Why did you mail those agreements?

24 A. It was on the -- on -- on your  
25 recommendation.

1 Q. And did you have an understanding of why?

2 A. It was my understanding the reason I was  
3 mailing them, as opposed to you mailing them, was that at  
4 the time my understanding was that neither Russ Lloyd nor  
5 Evelyn Perryman had Counsel; they weren't represented.  
6 And you indicated to me that it would have been un --  
7 inappropriate for -- for you, as an attorney, and also  
8 might have been construed as -- as a -- maybe a little  
9 bit intimidating if an attorney sent them something,  
10 considering that we were just wanting to assure them that  
11 they were -- no longer had to be a part of the case.

12 Q. Let me direct your attention to the section  
13 that's blown up for us here, that third recital from the  
14 bottom. In your mind at this time, was there any  
15 question about -- or some question about whether or not  
16 Ms. Perryman and/or Mr. Lloyd actually had Counsel and  
17 had perhaps asserted any counterclaims?

18 A. There was quite a bit of confusion. Like I  
19 said, with Mr. Lloyd, I had some indication, based on  
20 statements he made, that he had severed or was trying to  
21 sever his relationship with Sage.

22 Evelyn Perryman chose to resign, rather than  
23 continue to work at ASI, and I didn't know what she was  
24 going to do, or whether was continuing to work with Sage  
25 or what. So, I -- I didn't know for sure what her status

1 was.

2 Q. And is that why you sent these agreements?

3 A. No. I sent these agreements because my  
4 Counsel, you, suggested that this would be a good way to  
5 clarify their role in the case and to streamline it for  
6 trial.

7 MR. ZARIAN: Let's go to the next page.

8 Q. BY MR. ZARIAN: Did you draft any part of  
9 this agreement?

10 A. No, sir. I didn't draft any of this  
11 agreement.

12 Q. Do you remember contributing anything to the  
13 language in this agreement?

14 A. I didn't contribute anything to this  
15 agreement.

16 Q. Do you remember having any understanding as  
17 to whether or not the language in this agreement was  
18 standard for your lawyers and their practice in -- in  
19 various states and in Idaho?

20 A. What I understood was what you told me, and  
21 that was that this was a -- a standard form agreement  
22 that you used for generic settlement type of work, and  
23 that this was pretty plain vanilla, and just allowed  
24 the -- Mr. Lloyd and mister -- Ms. Perryman to be assured  
25 that they wouldn't have to be a part of this case going



1 forward.

2 Q. Was that your desire?

3 A. Yes, sir.

4 Q. Did you sign this agreement?

5 MR. ZARIAN: Let's go to the next page.

6 THE WITNESS: I -- no. I -- I never signed  
7 this agreement. I would have signed this agreement  
8 had -- had we actually cret -- come to an agreement. At  
9 the time this was sent out, this was an agreement that  
10 was -- was proposed.

11 Q. BY MR. ZARIAN: Did Ms. Perryman ever respond  
12 to your desire to try to clarify the situation, as far as  
13 whether or not she was making any counterclaims, or was  
14 or was not a party to the case?

15 A. No. Ms. Perryman never responded to the  
16 letter. I tried to call her on a couple occasions; there  
17 was -- there was no answer, and there was no reply to my  
18 calls.

19 Q. Is your understanding, though, that she gave  
20 a copy of what you sent her to the defendants?

21 A. Later I became aware that she had -- I  
22 believe if I understand correctly, she gave a copy of  
23 this to Mr. Yearsley.

24 Q. Did you ever sign any agreement with  
25 Mr. Lloyd?

1 difficult and tedious. But working through a couple late  
2 nights -- in fact, I think we were working on a  
3 settlement agreement up until around midnight one  
4 evening, coming to agreement with -- with some folks on  
5 what we could do to have a meeting of the minds, and --  
6 and avoid having to -- to come into court and have active  
7 litigation of that process.

8 Q. In addition to trying to -- to have a  
9 settlement agreement to clarify the status of  
10 Ms. Perryman and Mr. Lloyd, did you try to settle with  
11 Zilog in this case, at some point did you reach out to  
12 them?

13 A. We definitely reached out and -- and made --

14 Q. Let me ask you about that. In 2013, did you  
15 reach out to Zilog --

16 A. Very much so.

17 Q. -- to try to settle with them?

18 MR. HUSCH: Objection, Your Honor.

19 THE WITNESS: We did.

20 MR. HUSCH: Relevance.

21 THE COURT: Excuse me. What's the relevance  
22 of this?

23 MR. HUSCH: 408.

24 MR. ZARIAN: Your Honor, it goes to their  
25 bias in this case and the bias of the other individual --

1 THE COURT: I'm --

2 MR. ZARIAN: -- defendants.

3 THE COURT: -- sorry, Counsel. This is not  
4 the right way to do this, and you know this.

5 MR. ZARIAN: Oh.

6 THE COURT: This is clearly, clearly  
7 prohibited by the policy underlying the rule in Rule 408.  
8 So, I'll not allow any inquiry along these lines. It's  
9 absolutely outside the bounds of -- of the normal  
10 process, without seeking permission, outside the --

11 MR. ZARIAN: I apologize, Your Honor.

12 THE COURT: -- presence of the jury, which  
13 you have not done.

14 So --

15 MR. ZARIAN: May we side --

16 THE COURT: -- ladies and gentlemen, I'm  
17 going to ask you to ignore the last couple of statements  
18 made by Mr. Zarian, the last question and the response,  
19 and strike it, as if you had never heard it.

20 I'm doing that on my own motion. I -- I  
21 don't want to have this conversation again, Mr. Zarian.

22 MR. ZARIAN: Okay.

23 THE COURT: This is inappropriate and you  
24 know it, sir. Go ahead on another subject.

25 MR. ZARIAN: Okay. Well, we made a proffer

1 on this, Your Honor, and that's --

2 THE COURT: Excuse me, sir. Go to another  
3 subject.

4 MR. ZARIAN: I -- I am.

5 THE COURT: Okay. Thank you.

6 MR. ZARIAN: Your Honor, I have no further  
7 questions.

8 THE COURT: Thank you.

9 MR. ZARIAN: I just wanted to reference that.  
10 Thank you, Your Honor.

11 THE COURT: Recross?

12 MR. COOPER: None, Your Honor. Thank you.

13 MR. HUSCH: None, Your Honor. Thank you.

14 THE COURT: You can take another seat,  
15 please.

16  
17 (End of the requested portion at 1:28 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

**REPORTER'S CERTIFICATE**

I, Susan M. Wolf, Registered Professional Reporter and Certified Shorthand Reporter in and for the State of Idaho, do hereby certify:

That the foregoing proceedings were taken down by me in machine shorthand at the time and place therein named, and thereafter the same was reduced to typewriting under my direct supervision; and

That the foregoing transcript contains a full, true, and verbatim record of the said proceedings.

WITNESS my hand this 16th day of February, 2015.

\_\_\_\_\_  
CSR No. 728

# **EXHIBIT B**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., ) Case CVOC-2011-0023344  
  )  
                          Plaintiff,  )  
  )  
vs.  )  
  )  
SAGE SILICON, et al,  )  
  )  
  Defendants.  )  
\_\_\_\_\_

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

OPENING/CLOSING REMARKS OF MR. JOHN ZARIAN

January 5 and 15, 2015

Hon. THOMAS F. NEVILLE, District Court Judge

Reported by:  
Susan M. Wolf, RPR  
CSR No. 728

**COPY**

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BOISE, IDAHO

Monday, January 5, 2015, 4:51 p.m.

(Start of requested portion.)

MR. ZARIAN: There's a number of -- of engineers, that are the employees that we're talking about. And they leave Zilog not -- not all together, but in ones and twos; they're all laid off over time and become unemployed.

And after they do, in due course, ASI hires them. Hires them. Even though ASI is a small company, it's -- it's looking to grow, and was at time in the Valley, and undertook to pay them full-time salaries, bonuses, overhead, and benefits. And later discovered, years later, that for the better part of a year, for more than six months in 2011, those individuals that had been hired, an investment had made in, had been working secretly for Zilog on the very work that ASI should have been doing, and on work that should have gone through ASI.

(End of requested portion.)

BOISE, IDAHO

Thursday, January 15, 2015

(Start of requested portion.)

MR. ZARIAN: There's a -- there's a neat story to the Hacklers too, and that's certainly more germane to the -- to what brings us here, and you've heard some evidence about it.

Like so many who move here to raise their families, they did just that. Eventually came back to Boise. They had a dream of starting a little company. And you heard about that a little bit from Doug, you heard about from Rich Chaney.

You heard about his dream was to have an on shore, U.S. company. And -- and that was a dream. He gave it a big name, American Semiconductor. Pretty ambitious. And -- but he picked Boise to start that company. And this is where he chose to make that dream happen. And so, he came, and he stayed, as so many of us -- so many of us do.

And -- and there's something about this culture here -- I'll just say it -- that -- that you notice when -- when you first get here. I don't know what it is, but -- but to me, one of the important,

1 valuable things about it is that aspect of -- of it's a  
2 place where it's -- it's different. I could name another  
3 couple of cities that are not too far and they're  
4 different. This is a different place. But it's a place  
5 where people can come, and pursue dreams, raise families,  
6 grow businesses. And that's what -- that's what the  
7 Hacklers have done, have sought to do.

8  
9 \* \* \* \* \*

10  
11 MR. ZARIAN: So, we move on. We move on. We  
12 move on to January, the rest of January, and the better  
13 part of two years now, at least from the perspective of  
14 ASI, we have a situation where we've got these four  
15 engineers, and then Ms. Perryman who comes later, working  
16 as part of the team. As part of ASI's team, helping  
17 build this -- this little company, with big dreams, here  
18 in Boise, Idaho.

19  
20 \* \* \* \* \*

21  
22 MR. ZARIAN: And we also know that the ASI  
23 employees who worked on this project through Sage made up  
24 almost half of the design engineers. They're a big  
25 chunk. It wasn't like, you know, drops in the -- in the

1 ocean there of -- of a ton of engineers already working  
2 or doing other things. They made up nearly half of -- of  
3 the folks working -- the design engineers working on that  
4 team.

5  
6 \* \* \* \* \*

7  
8 MR. ZARIAN: The question was raised, don't  
9 know why we're here. Well, I know why we're here. How  
10 about half our company conspired with a huge corporation  
11 to do stuff on the side and conceal it from us for six  
12 months. That's why we're here. That should be obvious.  
13 That should be apparent.

14 THE COURT: Excuse me.

15 MR. ZARIAN: And that --

16 THE COURT: Excuse me. I think it's  
17 inappropriate to refer to a huge corporation. That is  
18 overtly seeking bias, and is exactly contrary to the  
19 Court's instructions. So, I'll ask you to refrain from  
20 that.

21 MR. ZARIAN: Yes --

22 THE COURT: I'm not --

23 MR. ZARIAN: -- Your Honor.

24 THE COURT: -- I'm not waiting for an  
25 objection. I think that's just plain out of line, and

1 Counsel knows better.

2 MR. ZARIAN: Okay.

3  
4 (End of requested portion.)  
5  
6  
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**REPORTER'S CERTIFICATE**

I, Susan M. Wolf, Registered Professional Reporter and Certified Shorthand Reporter in and for the State of Idaho, do hereby certify:

That the foregoing proceedings were taken down by me in machine shorthand at the time and place therein named, and thereafter the same was reduced to typewriting under my direct supervision; and

That the foregoing transcript contains a full, true, and verbatim record of the said proceedings.

WITNESS my hand this 18th day of February, 2015.

\_\_\_\_\_  
CSR No. 728

# EXHIBIT C

AMERICAN SEMICONDUCTOR, INC., ) Case CVOC-2011-0023344  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SAGE SILICON, et al, )  
 )  
 Defendants. )  
 )

Hon. THOMAS F. NEVILLE, District Court Judge

ORIGINAL



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I N D E X

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I N D E X

<u>Witness</u>	<u>Examination By</u>	<u>Page</u>
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(No witnesses were sworn or examined.)

E X H I B I T S

<u>Exhibit</u>	<u>Description</u>	<u>Mark/Admit</u>
----------------	--------------------	-------------------

(No exhibits were marked or admitted.)

1 BOISE, IDAHO

2 Friday, January 30, 2015, 1:42 p.m.

3  
4 THE COURT: Have a seat, please.

5 Apologize for the -- this is Judge Neville.

6 MR. OBORN: Yes, Judge. J.D. Oborn.

7 THE COURT: How are you, sir?

8 MR. OBORN: I'm doing well. How about  
9 yourself?

10 THE COURT: I'm -- I'm a little late coming  
11 in. I apologize to everyone here present.

12 We have John Zarian, we have Chad Bernards,  
13 we have Gerald -- Gerry Husch here present, physically,  
14 all of us about to begin to spend quality time with the  
15 Court, which I appreciate. This was a conference which,  
16 as I recall, I requested. And I wanted to explain the  
17 why of that, and -- and get Counsel's input, if I might.

18 MR. ZARIAN: Your Honor, if I may --

19 THE COURT: I'm sorry. Mist -- I don't -- I  
20 don't know who is with you, and I apologize.

21 MS. ELLSWORTH: I'm Jamie Ellsworth.

22 THE COURT: Thank you. And are you Counsel  
23 with Mr. Zarian?

24 MS. ELLSWORTH: Yes.

25 THE COURT: Okay; thank you.

1 51.

2 In -- in this case, the plaintiff, ASI, has  
3 not sought the Court's permission before contacting  
4 jurors, and seeks to further contact jurors via  
5 telephone. I'm -- I'm concerned that that not be for an  
6 improper purpose.

7 There's not been a motion filed by plaintiff  
8 in this matter to reach out to jurors, and I need to  
9 inquire of Mr. Zarian, for what purpose does -- do you  
10 and your firm wish to contact jurors in this matter?

11 Mr. Zarian.

12 MR. ZARIAN: Thank you, Your Honor.

13 Let -- let me, first of all, explain the --  
14 the reference in my e-mail. That was to a conversation  
15 with the juror foreperson that was just sort of  
16 happenstance in the courthouse as -- as we left. I  
17 believe Mr. Bernards also spoke with that same juror,  
18 that same day; this was after the verdict was returned.

19 And so -- so, that -- that was the reference  
20 in the e-mail, Your Honor. It was simply, in the -- in  
21 the main, thanking her for her service. There were a  
22 couple of questions, I think. And the conversation  
23 with -- involving Mr. Bernards did not take place at the  
24 same time, but -- but at a different time.

25 The question we had, in the main, and -- and

1 really the -- the only purpose of any contact, which  
2 we've tried to make transparent to the Court, which --  
3 which explains the -- the contact to the Court, is, you  
4 know, the question that was raised by entry of the  
5 judgment with respect to the first two claims for relief,  
6 Your Honor.

7           The -- the -- as the Court will recall, the  
8 Special Verdict Form answered in the affirmative  
9 Questions 1 and 2 with respect to each of the individual  
10 defendants, finding, in effect, that there had been  
11 breaches of contract and fiduciary duty by each of them.  
12 And then, the foreperson entered an amount, which turned  
13 out to be the same amount for both Question 3 and  
14 Question 5 for damages.

15           The amount was then crossed out on Question 3  
16 and reduced to zero, or changed to zero, with -- with a  
17 name of -- of the juror foreperson then entered there.

18           And so, the only question -- we certainly  
19 don't seek to inquire, or -- or dispute, or challenge the  
20 validity of the verdict, Your Honor. I think it would  
21 just be by way of an explanation. I think that the  
22 intent, as we understand it here, was simply to not award  
23 the same damages twice, consistent with the Court's  
24 instructions.

25           And so, we were concerned, Your Honor, that

1 there might be an argument made, perhaps, given the  
2 language of the judgment, that ASI did not prevail on  
3 the contract claim or on the breach of fiduciary duty  
4 claim. And that, in our view, would be not consistent,  
5 Your Honor, with I think the -- both the intent, and --  
6 and the language, and the -- and the verdict itself.

7 So, it's more a matter of clarification, I  
8 think. In the main, we're -- we're agreed with the  
9 judgment; the amount is correct. The jury wanted to  
10 avoid awarding double damages; that's something we all  
11 agreed to here in court, and -- and would agree to now.  
12 We think the judgment should accurately reflect the total  
13 amount, which -- which they did not mean to double,  
14 and -- and meant to keep clearly, form -- from the  
15 verdict form itself, at 195,175 for -- for the total  
16 recovery.

17 I don't know if that helps, Your Honor, but  
18 that -- that's the only question that we had, the only  
19 thing we tried to clarify. And, I think, the only  
20 purpose for which Ms. Barlow, or anybody else would be --  
21 since she's -- you know, crossed out that number and put  
22 in the zero, would -- would be inquired.

23 Maybe it's a nonissue, Your Honor. If --  
24 if there's no dispute that ASI did, indeed -- the --  
25 the jury did make a finding that there was a breach of

1 contract and breach of fiduciary duty, then it's not an  
2 issue, Your Honor. I think -- I think we're -- we're  
3 fine as is.

4 It was just the language of the judgment  
5 which narrowed, you know, the award only to the claim for  
6 tortious interference with prospective economic  
7 expectancy, which was the third claim, that gave us  
8 pause, Your Honor. That was the -- we had proposed  
9 language that was broader, that just said, you know,  
10 recover the amount of \$195,175 against defendants,  
11 without really specifying that it was only on that one  
12 claim.

13 And so, that was the language we had  
14 proposed. The language from defendants really narrowed  
15 it, and that was the -- the language adopted by the Court  
16 narrowed that to just the one claim, which appeared to  
17 exclude the other two claims.

18 I -- I hope that helps, Your Honor. I --  
19 I -- that's -- that's -- that was the thing.

20 THE COURT: All right.

21 Well, I -- I had, frankly, polled the jury  
22 personally, ad nauseam, on -- each juror on each  
23 paragraph and each provision. I thought it went on for a  
24 long time; it -- it seemed tedious to me at the time, but  
25 I thought there was a reason for doing that. And so, I



1 just -- I don't understand what kind of clarification  
2 would be necessary.

3 The verdict speaks for itself. You knew --  
4 you know that everyone that was polled stated whether or  
5 not this was their verdict, and we got that from each and  
6 every juror on each and every provision of the Special  
7 Verdict Form. So, clarifying what?

8 MR. ZARIAN: Clar -- clarifying, Your Honor,  
9 whether or not ASI prevailed on the breach of contract  
10 claim, and clarifying whether or not ASI prevailed on the  
11 breach of fiduciary duty of loyalty.

12 THE COURT: Well, the verdict says that they  
13 were found to have -- as I recall, the Special Verdict  
14 says that each of the individual Sage defendants were  
15 found to have breeched, in Question No. 1, paragraph 7,  
16 the duty not to compete in the Employee Confidential --  
17 Confidentiality Agreement, and Question No. 2, all three  
18 individual Sage defendants were found to have breached  
19 the fiduciary duty of loyalty to American Semiconductor,  
20 Inc., but -- but zero damages were returned.

21 So, what is there to clarify.

22 MR. ZARIAN: Again --

23 THE COURT: What -- what questions can you  
24 have to a -- a Special Verdict Form that's this precise  
25 and this specific, is my question.

1 know whether or not there's going to be further juror  
2 contact, and for what purpose it might be held. And  
3 if -- if there is to be further juror contact, I think it  
4 would benefit all the parties, and the Court, to know  
5 what further -- what purpose that might be for, and --  
6 and whether that's going to happen or not because --  
7 because I do object to it.

8 I do agree with the Court that this is  
9 improper, in an attempt to impeach the jury verdict, and  
10 I don't want to spend any more time or money on it.

11 THE COURT: Mr. Bernards?

12 MR. BERNARDS: I -- I've -- I've got nothing  
13 further to add that's -- what -- what's already been  
14 said.

15 THE COURT: Well, Mr. Zarian, one last word,  
16 sir.

17 MR. ZARIAN: Thank you, Your Honor.

18 And -- and I'll just reference for the Court,  
19 there -- there's authority. Of course, in Idaho, the  
20 Umphrey vs. Sprinkel case is one that --

21 THE COURT: What's the cite?

22 MR. ZARIAN: -- and -- and it's --

23 THE COURT: What's the cite for that, sir?

24 MR. ZARIAN: Your Honor, it's 106 Idaho 700.

25 THE COURT: You're saying that's authority

1 for --

2 MR. ZARIAN: Well -- well, Your Honor --

3 THE COURT: -- seeking a clarification that  
4 appears to be inconsistent with Rule 606(b) of the Idaho  
5 Rules of Evidence?

6 MR. ZARIAN: If I may explain, Your Honor.

7 THE COURT: Sure.

8 MR. ZARIAN: Pre -- pre Rule 606(b) -- and  
9 this case is pre Rule 606(b) -- there was authority that  
10 the Courts could consider affidavits in order to clarify  
11 what a verdict was, but not to impeach the verdict.

12 And, of course, 606(b) I think addresses  
13 instances where someone seeks to impeach the verdict, but  
14 not instances where parties seek to clarify what the  
15 verdict was.

16 To be clear, there's no attempt here, I -- at  
17 least as we see it, Your Honor; the Court may -- may  
18 disagree -- to impeach the verdict. It was simply an  
19 effort to clarify the verdict. And -- and I think,  
20 although there -- I should -- in all candor, there's no  
21 cases like *Umphey* post Rule 606(b). So -- so -- but it  
22 does not appear to us that that aspect of the prior case  
23 law, which goes back many decades, was abrogated by  
24 Rule 606(b), that is the notion that affidavits are  
25 appropriate to clarify a verdict, but not to impeach it.

1           Again, I think maybe folks -- that minds  
2     could differ on whether this is impeaching or it's  
3     clarifying. We understood it to be clarifying and not  
4     impeaching, but -- but that was authority I wanted to  
5     bring to the Court's attention, and -- and does pre-date  
6     Rule 606(b), Your Honor.

7           THE COURT: Thank you.

8           MR. BERNARDS: Your Honor?

9           THE COURT: Yes?

10          MR. BERNARDS: I just think that -- looking  
11     at the language of -- of 606(b), it does say a juror may  
12     not testify as to any matter. So, I think it would cover  
13     clarification as well.

14          THE COURT: The -- the only juror contact --  
15     or the only testimony from a juror, the only receipt of  
16     information coming back from a juror post-verdict would  
17     be on the questions that are -- Rule 606(b) goes on to  
18     talk about, which are whether or not there was any  
19     improper outside influence improperly brought to bear on  
20     any juror, or whether or not there was -- any member of  
21     the jury determined any issue by resorting to chance,  
22     which the Court, of course, had specifically instructed  
23     against, as being prohibited here.

24          So, that's the only appropriate juror contact  
25     that -- that is -- is contemplated by the Rule here. I

1 don't see -- the -- Rule 606 doesn't talk about you can  
2 clarify but not impeach. I don't know how in the dickens  
3 you would make that distinction anyway.

4 So, this -- this is -- I remain troubled by  
5 this, Mr. Zarian. I -- I -- I was hoping to -- you still  
6 would like to contact jurors; is that what you're saying?

7 MR. ZARIAN: Your Honor, we -- we would  
8 simply -- yes, as a short answer -- hope to clarify, by  
9 contacting Ms. Barlow in particular, the reason for the  
10 interlineation on -- on Question No. 3. And we  
11 understand that to have been, based on that preliminary  
12 discussion, that the -- the guidance they felt they had  
13 received through -- through, for example, the jury  
14 instruction on this matter, was that once they were done  
15 and they had these two numbers, they needed to bring one  
16 of them down to zero.

17 And -- and so, that, we -- we hope, will not  
18 be used to argue, in any way. And -- and the Court is --  
19 obviously correctly said that there's a very clear  
20 finding of breach of contract in -- and breach of duty of  
21 loyalty here. But we hope that won't be used to argue  
22 that -- that there was -- in fact, ASI did not obtain a  
23 finding of breach of contract that would conceivably  
24 support an award of attorney's fee.

25 The Court has discretion on that. We

1 there from here.

2 MR. ZARIAN: Okay. Thank you --

3 THE COURT: So, I --

4 MR. ZARIAN: -- thank you Your Honor.

5 THE COURT: -- so, I -- I -- you know, but  
6 it's up to you whether you want to file such a motion,  
7 and you may have some other purpose, as -- as the example  
8 I talked about; learning more about how you're perceived  
9 by jurors as a trial attorney. I -- you know, that could  
10 be beneficial to Counsel in the long run.

11 Civil practitioners don't get to try cases every  
12 week; just as a matter of course, you don't. And so --

13 MR. ZARIAN: Thank you, Your Honor.

14 THE COURT: -- learning what you can may be  
15 beneficial to you in the long run. If it takes somebody  
16 ten years to get into their first jury trial in a civil  
17 practice, and they do two trials a -- a month on the  
18 criminal side as a prosecutor or public defender, there's  
19 a big difference there, and -- and I respect that, so.

20 All right. Thank you.

21 MR. ZARIAN: Thank you, Your Honor.

22 THE COURT: Be in recess.

23  
24 (The proceedings concluded at 2:25 p.m.)  
25

**REPORTER'S CERTIFICATE**

I, Susan M. Wolf, Registered Professional Reporter and Certified Shorthand Reporter in and for the State of Idaho, do hereby certify:

That the foregoing proceedings were taken down by me in machine shorthand at the time and place therein named, and thereafter the same was reduced to typewriting under my direct supervision; and

That the foregoing transcript contains a full, true, and verbatim record of the said proceedings.

WITNESS my hand this 7th day of February, 2015.

\_\_\_\_\_  
CSR No. 728

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_ FILED \_\_\_\_\_ 17  
A.M. \_\_\_\_\_ P.M. 12

FEB 19 2015

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S OBJECTION DEFENDANTS  
SAGE SILICON SOLUTIONS, LLC,  
DAVID ROBERTS, GYLE  
YEARSLEY AND WILLIAM  
TIFFANY'S "JOINDER" IN ZILOG,  
INC.'S MOTION FOR ATTORNEY  
FEES AND COSTS**



Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, respectfully submits the following memorandum in opposition to Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany's (collectively, the "Sage Defendants") "joinder" in Zilog, Inc.'s Motion for Attorney Fees and Costs (filed, Feb. 5, 2015).

### **OBJECTION**

On February 4, 2015, Defendant Zilog, Inc. ("Zilog") filed a Memorandum of Fees and Costs requesting over \$1 million in costs and attorney's fees against ASI. Zilog also filed an accompanying Motion for Attorney Fees and Costs together with a supporting 41-page over-length memorandum and a lengthy declaration of counsel attaching voluminous pages of exhibits. The motion seeks relief under I.R.C.P. 54(d)(1) and I.R.C.P. 54(e)(1); however, Zilog predicates the motion (against ASI and its counsel) on a number of grounds, including I.R.C.P. 41(a)(2), I.R.C.P. 37, and I.R.C.P. 11(a)(1).

On February 5, 2015, despite the fact that they had already file their own motion for fees and costs against ASI the day before, the Sage Defendants purported to "join" in Zilog, Inc.'s Motion for Attorney's Fees and Costs. This "joinder" comprised a one-page, two-paragraph document in which the Sage Defendant sought to "join" Zilog's motion requesting costs and attorney's fees against ASI.

However, the Sage Defendants have failed to state the specific basis upon which each of them is entitled to the relief Zilog is seeking (including how each of them was prejudiced by ASI's alleged improper conduct, which discovery papers and discovery motions they filed, *et cetera*), and the specific relief each of them is seeking (including what specific attorney's fees and costs they are attributing to ASI's alleged improper conduct). Therefore, without knowing

the Sage Defendants' specific arguments and claims for relief, ASI cannot possibly respond to their "joinder".

Further, to the extent that the Sage Defendants are purporting to "join" in Zilog's motion for fees and costs under Rule 54, that joinder is untimely under the express terms of that rule. See I.R.C.P. 54 (providing that requests for costs and fees be filed no later than fourteen days after entry of judgment). This "joinder" which, by its terms, constitutes a replication of the filing of papers filed by Zilog under Rule 54, was filed more than fourteen days after entry of judgment, and is thus untimely.

### CONCLUSION

For the foregoing reasons, ASI objects to the Sage Defendants' improper and unprocedural "joinder" and, on those grounds, request that Court deny the relief sought.

DATED this 19th day of February, 2015.

PARSONS BEHLE & LATIMER

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John N. Zarian

Kennedy K. Luvai

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Kennedy K. Luvai

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NO. \_\_\_\_\_ FILED \_\_\_\_\_ 1217  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_  
FEB 19 2015  
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
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Plaintiff,

vs.

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Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**NOTICE OF INTENT TO OPPOSE  
THE SAGE DEFENDANTS' MOTION  
TO DISALLOW AMERICAN  
SEMICONDUCTOR, INC.'S  
REQUEST FOR COSTS AND  
ATTORNEY'S FEES**

RELATED COUNTER ACTIONS

Plaintiff American Semiconductor, Inc. ("ASI"), by and through its undersigned counsel of record, hereby provides notice of its intent to oppose the Sage Defendants' Motion to Disallow ASI's Request For Costs and Attorney's Fees (filed, Feb. 13, 2015).

**NOTICE**

On February 4, 2015, ASI filed a Memorandum of Costs and Fees and accompanying Motion for Costs and Fees. ASI is seeking attorney's fees and costs under ASI's Employee Confidentiality Agreement ("ECA") with defendants David Roberts, Gyle Yearsley, and William Tiffany, attorney's fees against the individual defendants under Idaho Code § 12-120(3), and costs against the individual defendants and Sage Silicon Solutions, LLC ("Sage") under Rule 54 of the Idaho Rules of Civil Procedure. Under Rules 54(d)(6) and 54(e)(6) of the Idaho Rules of Civil Procedure, the Sage Defendants had up to fourteen (14) days in which to file a motion to disallow ASI's requested costs and attorney's fees. The Sage Defendants, however, chose to file their motion to disallow after less than fourteen (14) days, on February 13, 2015.

Under Rules 54(d)(6) and 54(e)(6), motions to disallow costs and attorney's fees must "be heard and determined by the court as other motions under [the Idaho Rules of Civil Procedure]." I.R.C.P. 54(d)(6). Therefore, under Rule 7(b)(3), a motion to disallow attorney's fees and costs must be filed *and* served at least fourteen (14) days before the hearing on said motion. Pursuant to Rule 7(b)(3), the party against whom a motion to disallow is brought will have until seven (7) days before the hearing in which to file an opposition. This means the opposing party is entitled to receive the motion to disallow at least seven (7) days before the opposition is due.

Apparently, the Sage Defendants are contemplating having their motion to disallow ASI's request for costs and attorney's fees heard on February 19, 2015. But they have failed to file and serve the motion in accordance with Rules 7 and 54.

Instead, the Sage Defendants filed their motion to disallow on February 13, 2015, *less than seven (7) days before the February 19, 2015, hearing*. Furthermore, the Sage Defendants served their motion disallow via overnight mail, on February 12, 2015, which meant ASI did not receive the motion until February 13, 2014, *less than seven (7) days before the February 19, 2015 hearing*. Thus, under Rule 7(b)(3), *ASI's opposition would have been due the day before it actually received the Sage Defendants' motion to disallow*. In addition, because the Sage Defendants served their motion via overnight mail (and with no party to this action having consented to service by e-mail), pursuant to Rule 6(e)(1), ASI was entitled to an additional three (3) days in which to file its opposition.

Having failed in its effort to facilitate a conference to discuss these procedural uncertainties, among others, on February 12, 2015, ASI filed a motion to continue the February 19, 2015, hearing on the parties' motions for attorney's fees and costs so as to permit all related motions to be briefed and heard in accordance with the timing set by Rules 7 and 54. ASI's motion and supporting arguments are incorporated herein by reference. As the Court has not yet ruled on ASI's motion to continue, and in an abundance of caution, ASI hereby submits this notice of its intent to oppose the Sage Defendants' pending motion to disallow costs and fees and expressly preserves its right to do so in accordance with Rules 7 and 54 of the Idaho Rules of Civil Procedure. ASI will file and serve its opposition to the motion in accordance with a briefing schedule based upon a continued hearing date or as otherwise ordered by the Court.

DATED this 19th day of February, 2015.

PARSONS BEHLE & LATIMER

By Kennedy

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

**CERTIFICATE OF SERVICE**

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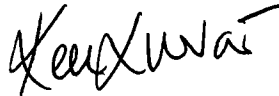
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FEB 20 2015

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GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

RELATED COUNTER ACTIONS

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**AMERICAN SEMICONDUCTOR,  
INC.'S MOTION TO DISALLOW  
COSTS IN OPPOSITION TO SAGE  
DEFENDANTS' MEMORANDUM IN  
SUPPORT OF AN AWARD OF  
COSTS AND ATTORNEY FEES**

**ORAL ARGUMENT REQUESTED**

ORIGINAL

2

Plaintiff and counterdefendant American Semiconductor, Inc. ("ASI"), by and through its counsel of record, Parsons Behle & Latimer, pursuant to Rules 54(d)(6), 54(e)(6), 6(e)(1), and 7(b)(3) of the Idaho Rules of Civil Procedure hereby brings the following Motion to Disallow Costs in Opposition to Sage Defendants' Memorandum in Support of an Award of Costs and Attorney Fees ("Motion to Disallow"). ASI hereby moves to disallow all costs and attorney's fees requested by defendants David Robert, Gyle Yearsley, William Tiffany, and Sage Silicon Solutions, LLC for the reasons that defendants request failed to comply with Rule 54's requirements, the defendants are not the prevailing party and ASI is the prevailing party entitled to costs and attorney's under Rule 54, and the defendants are seeking items of attorney's fees and costs not in compliance with Rule 54. This motion is supported by ASI's Memorandum In Support of American Semiconductor, Inc.'s Motion To Disallow Costs and Opposition To The Sage Defendants' Motion To Disallow Costs filed contemporaneously herewith.

ASI submits this motion subject to and without waiving its objections to being required to submit this motion without having the opportunity for full briefing and to be heard, to which ASI is entitled under Rules 54(d)(6), 54(e)(6), and 7(b)(3). ASI further reserves the right to file a reply brief in the event the Sage defendants proceed with filing any objection to ASI's motion to disallow.

ORAL ARGUMENT IS REQUESTED

DATED this 20<sup>th</sup> day of February, 2015.

PARSONS BEHLE & LATIMER

By Kendras  
John N. Zarian  
Kennedy K. Luvai  
Sarah H. Arnett  
*Attorneys for Plaintiff and Counterdefendant*  
*AMERICAN SEMICONDUCTOR, INC.*

AMERICAN SEMICONDUCTOR, INC.'S MOTION TO DISALLOW COSTS IN  
OPPOSITION TO SAGE DEFENDANTS' MEMORANDUM IN SUPPORT OF AN  
AWARD OF COSTS AND ATTORNEY FEES

4822-4265-4753.1

PAGE - 2

002051

**CERTIFICATE OF SERVICE**

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FEB 20 2015

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vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants

Case No.: CV OC 1123344

*The Honorable Thomas F. Neville*

**COMBINED MEMORANDUM IN  
SUPPORT OF: (1) AMERICAN  
SEMICONDUCTOR, INC.'S MOTION  
TO DISALLOW COSTS; AND (2)  
AMERICAN SEMICONDUCTOR,  
INC.'S OPPOSITION TO SAGE  
DEFENDANTS' MOTION TO  
DISALLOW COSTS**

RELATED COUNTER ACTIONS

**COMBINED MEMORANDUM IN SUPPORT OF: (1) AMERICAN  
SEMICONDUCTOR, INC.'S MOTION TO DISALLOW COSTS; AND (2)  
AMERICAN SEMICONDUCTOR, INC.'S OPPOSITION TO SAGE  
DEFENDANTS' MOTION TO DISALLOW COSTS**

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Plaintiff American Semiconductor, Inc. ("ASI") respectfully submits the following combined memorandum in support of: (1) ASI'S motion to disallow costs; and (2) ASI'S opposition to Sage defendants' motion to disallow costs.

## I. INTRODUCTION

On February 4, 2015, ASI filed a memorandum of costs and corresponding motion for attorney's fees and costs requesting an award of attorney's fees against defendants David Roberts ("Roberts"), Gyle Yearsley ("Yearsley"), and William Tiffany ("Tiffany") and an award of costs against all three individual defendants and defendant Sage Silicon Solutions, LLC ("Sage").<sup>1</sup> On February 4, 2015, the Sage defendants also filed a motion for attorney's fees and costs (without including the required memorandum of costs) in which Roberts, Yearsley, and Tiffany are seeking attorney's fees against ASI and all of the Sage defendants are seeking costs against ASI.

In their cross motions for attorney's fees, both sides request fees under the attorney's fees provision in the Employee Confidentiality Agreement ("ECA") as well as under Idaho Code § 12-120(3). ASI and the individual defendants are likewise seeking costs under the ECA, and ASI and all of the Sage defendants are seeking costs as a matter of right under Rule 54(d)(1) of the Idaho Rules of Civil Procedure.

On February 13, 2015, the Sage defendants filed a motion to disallow ASI's requested costs and attorney's fees. This memorandum will serve as both ASI's opposition to the Sage defendants' motion to disallow as well as support for ASI's motion to disallow the Sage defendants' requested attorney's fees and costs, which is being filed contemporaneously herewith. ASI also incorporates

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<sup>1</sup>When referred to collectively the individual defendants and Sage will be referred to as the "Sage defendants."

herein by reference the arguments and authority set forth in its Memorandum In Support of American Semiconductor, Inc.'s Motion for Costs and Fees Against the Sage Defendants (filed 02/04/15).

Based upon the parties' cross motions and motions to disallow, the primary disputed issue with respect to awarding attorney's fees and costs as between ASI and the Sage defendants is whether ASI or the Sage defendants are the prevailing party under Rule 54(d)(1)(B) of the Idaho Rules of Civil Procedure. For the reasons set forth herein and in support of ASI's motion for attorney's fees and costs, ASI respectfully submits it is the prevailing party entitled to its requested fees and costs.

## **II. ARGUMENT**

### **A. The Sage Defendants Have Failed To Request Attorney's Fees And Costs In Accordance With I.R.C.P. 54's Requirements**

Rules 54(d)(5) and 54(e)(5) of the Idaho Rules of Civil Procedure require that a party claiming costs and attorney's fees file and serve on the adverse party a memorandum of costs "itemizing each claimed expense" and stating "that to the best of the party's knowledge and belief the items are correct and that the costs claimed are in compliance with this rule." *See* I.R.C.P. 54(d)(5); I.R.C.P. 54(e)(5) ("Attorney fees, when allowable by statute or contract, shall be deemed as costs in an action and processed in the same manner as costs and included in the memorandum of costs.") The required memorandum of costs must be filed within fourteen days (14) after entry of judgment, and failure to file within the fourteen-day period is a waiver of the right to costs and attorney's fee. *See* I.R.C.P. 54(d)(5); I.R.C.P. 54(e)(5).

In submitting their requests for attorney's fees and costs, Roberts, Yearsley, Tiffany, and Sage failed to file and serve the required memorandum of costs. A memorandum of costs should have been filed and served within fourteen days after entry of the judgment by no later than February 4, 2015.

The Sage defendants have filed and served an affidavit of their trial counsel, Gary Cooper, in which Mr. Cooper addresses the attorney's fees requested by the individual defendants. Mr. Cooper's affidavit also states the total amounts of costs sought by the defendants under the ECA and Rule 54(b)(1) but without providing the required itemization showing each cost item being claimed under the ECA and under Rule 54(d)(1) respectively. Thus, the defendants have not shown what costs are being claimed as a matter of right and what costs are being claimed pursuant to the ECA. Mr. Cooper's affidavit also lacks the requisite verification that defendants' requested costs are correct and claimed in compliance with Rule 54. Consequently, neither ASI nor the Court can verify that defendants are only seeking costs as a matter of right enumerated by Rule 54(d)(1) and that Roberts, Yearsley, and Tiffany are properly claiming costs under the ECA. Therefore, Mr. Cooper's affidavit does not satisfy Rule 54(d)(5) and Rule 54(e)(5)'s requirements, and the Sage defendants have waived their respective rights to seek costs and attorney's fees in this action.

For these reasons, ASI asserts that Roberts, Yearsley, Tiffany, and Sage's respective requests for costs and attorney's fees should be denied because they failed to file timely the required memorandum of costs and thereby waived their claims for costs and fees. Further, ASI makes the following objections to the defendants' requested costs and fees subject to and without waiving its overall objection to all claimed costs and fees as being waived.

**B. Sage Silicon Solutions, LLC Cannot Seek Attorney's Fees In This Action**

This action does not involve a contract or other commercial transaction between ASI and Sage; therefore, in ASI's pending Memorandum of Costs and motion for attorney's fees, ASI has not sought attorney's fees against Sage under either the ECA or Idaho Code § 12-120(3). Sage acknowledges that, for these same reasons, it cannot request attorney's fees against ASI in this action. *See Sage*

Nevertheless, repeatedly throughout their briefing, Roberts, Yearsley, and Tiffany refer to the “Sage defendants ” collectively. Thus, ASI is reiterating, as conceded by the individual defendants and Sage, that Sage has neither a contractual nor statutory basis to claim attorney’s fees against ASI in this action.

**C. Attorney’s Fees Sought Under The ECA Are Subject To The Reasonableness Analysis Required Under I.R.C.P. 54(e)(3)**

ASI as well as Roberts, Yearsley, and Tiffany claim attorney’s fees under the ECA’s cost and fees provisions. Section 6(c) of the ECA provides for attorney’s fees and costs to the prevailing party in any action to enforce its terms: “The prevailing party in any action to enforce this Agreement shall be reimbursed or paid by the other party for its *reasonable* attorney’s fees and all costs incurred in connection with such enforcement.” (Emphasis added). *See* Affidavit of John N. Zarian In Support of American Semiconductor, Inc.’s Motion for Attorney’s Fees and Costs Against the Sage Defendants (“Zarian Aff.”) (filed 02/04/15), ¶54, Exs. 35, 36, 37 at pp.2-3. Section 13 of the ECA likewise provides: “for all matters and actions arising under this Agreement[,t]he prevailing party shall be entitled to *reasonable* attorney’s fees and costs incurred in connection with such litigation.” (Emphasis added). *See Id.* at p.4.

In asserting their contractual claim for attorney’s fees, Roberts, Yearsley, and Tiffany recognize the ECA’s fee provisions are subject to the prevailing party analysis under Idaho Rule of Civil Procedure 54(d)(1)(B). *See* Sage Defendants’ Supporting Memo, pp. 5, 8. But despite acknowledging the provisions’ plain language restricting a fee award to the “prevailing party,” they inexplicably fail to recognize that the provisions also clearly limit the prevailing party to recovering “*reasonable attorneys’ fees.*” *See* Zarian Aff. (filed 02/04/2015), ¶54, Exs. 35, 36, 37 at pp.2-3, 4.



Unlike the attorney's fee provisions addressed in cases cited by the defendants, the ECA's clear and unambiguous language limiting attorney's fee awards thereunder to "reasonable attorney's fees" brings the provision within Rule 54(e)'s application. *See* I.R.C.P. 54(e)(1); I.R.C.P. 54(e)(8) (Defining the scope of Rule 54(e) as being applicable to any claim for attorney fees made pursuant to any contract, "to the extent that the application would not be inconsistent with such contract."); *see also Bank of Idaho v. Colley*, 103 Idaho 320, 326, 647 P.2d 776, 782 (Ct. App. 1982) (holding the I.R.C.P. 54(e)(3) factors were applicable to the trial court's determining the amount of an attorney fee award pursuant to a guaranty instrument requiring the guarantor "to pay a reasonable attorneys' fee and all other costs and expenses which may be incurred by [plaintiff] Bank in the enforcement of this Guaranty."). Therefore, any amount of attorney's fees awarded under the ECA must be determined subject to the Court's consideration of the Rule 54(e)(3) factors.

**D. ASI Is The Prevailing Party Entitled To Costs & Attorney's Fees**

The prevailing party question is the focal point for both ASI's and the Sage defendants' cross motions for costs and attorney's fees.

"In determining which party prevailed where there are claims and counterclaims between opposing parties, the court determines who prevailed 'in the action'; that is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis." *Oakes v. Boise Heart Clinic Physicians, PLLC*, 152 Idaho 540, 545, 272 P.3d 512, 517 (2012). In such cases, "[b]oth a party's successes in bringing claims and in defending against them are important to the prevailing party analysis." *Hobson Fabricating Corp. v. SE/Z Construction, LLC*, 154 Idaho 45, 50, 294 P.3d 171, 176 (2012) (citing *Oakes v. Boise Heart Clinic Physicians, PLLC*, 152 Idaho 540, 546, 272 P.3d 512, 518 (2012)); *see also Nguyen v. Bui*, 146 Idaho 187, 192, 191 P.3d 1107, 1112

(Ct. App. 2008) (explaining "there are three principal factors a trial court must consider when  
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determining which party, if any, prevailed: (1) the final judgment or result obtained in relation to the relief sought; (2) whether there were multiple claims or issues between the parties; and (3) the extent to which each of the parties prevailed on each of the claims or issues.”) (citing *Daisy Mfg. Co., Inc. v. Paintball Sports, Inc.*, 134 Idaho 259, 261–62, 999 P.2d 914, 916–17 (Ct.App.2000) ).

In this case, all parties agree the Court must make a prevailing party determination under Rule 54(d)(1) in accordance with the foregoing guidelines providing that such determination is to be made by taking an “overall view” of the case. *See* Sage Defendants’ Supporting Memo, pp. 8-9. As explained in support of ASI’s motion for costs and attorney’s fees, the Court should give greatest weight to ASI’s having prevailed against the individual defendants on the pivotal issues of: (1) liability for breaching their duties not to compete with ASI, (2) the Sage defendants causing ASI to lose a valid economic expectancy in contracting with Zilog, and (3) ASI’s being entitled to substantial damages for lost profits from the Zilog opportunity. On the other hand, the Sage defendants ask the Court to minimize the significance and effect of the jury’s findings against them and, instead, urge the Court to give undue weight to ASI’s dismissal of its other claims before trial. In a further attempt to minimize significance of the jury’s awarding ASI a substantial amount of damages, the Sage defendants mischaracterize the damages and issues before the jury.

As ASI asserts in support of its pending motion for costs and attorney’s fees, and as further asserted herein, ASI asks the Court to take an “overall view” of the outcome in this case which gives due weight to ASI’s having prevailed on all pivotal issues in its action against Roberts, Yearsley, Tiffany, and Sage as well as on both of the Sage defendants’ counterclaims.

#### **1. ASI Prevailed On The Pivotal Issue Of Liability**

Roberts, Yearsley, and Tiffany repeatedly attempt to minimize significance of the jury’s verdict finding they breached their contractual and fiduciary duties not to compete with ASI by providing

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design engineering services to Zilog through Sage. *See* Sage Defendants' Supporting Memo, pp. 6-7, 9-12. However, as already discussed at length in ASI's memorandum supporting its motion for costs and attorney's fees, the issue as to whether the individual defendants breached their non-compete obligations was in fact the pivotal liability issue for all of ASI's claims tried against the individual defendants, Sage, and Zilog. ASI has undisputedly prevailed on this issue. Rather than repeat its arguments verbatim, ASI refers the Court and incorporates herein by reference the arguments at pages 3-5 of its Memorandum In Support of American Semiconductor, Inc.'s Motion for Costs and Fees Against the Sage Defendants (filed 02/04/15)). When considered within the context of ASI's claims and the jury's verdict awarding ASI damages against the individual defendants and Sage (discussed below), ASI's obtaining a jury verdict finding Roberts, Yearsley, and Tiffany liable for breaching their contractual and fiduciary duties not to compete weighs strongly in favor of ASI's status as the prevailing party. Likewise, ASI undisputedly prevailed on the issue of liability for its tortious interference with prospective economic advantage claim against the Sage defendants.

## **2. ASI Prevailed On The Pivotal Causation Issue**

The Sage defendants completely disregard that in entering a verdict for ASI on ASI's tortious interference with economic expectancy claim against the Sage defendants, the jury found in ASI's favor on the pivotal causation issue as to whether ASI had a valid economic expectancy in contracting with Zilog. *See* Final Jury Instructions (filed 01/16/2015), Instruction Nos. 11-14. Throughout this litigation and at trial, both the Sage defendants and Zilog vigorously disputed that ASI had a valid expectancy in contracting with Zilog. But, now, the issue of ASI's economic expectancy in contracting with Zilog has been decided in ASI's favor on the merits for purposes of these and any future proceedings. Therefore, from an overall view of the case, ASI's prevailing on this critical issue should be given significant weight in favor of ASI's status as the prevailing party.

### 3. ASI Prevailed On The Issue Of Damages

Although the Sage defendants also brought counterclaims seeking monetary recovery against ASI, ASI was the only party to be awarded damages in this action. As already discussed in the memorandum supporting ASI's motion for costs and attorney's fees, the jury's \$195,175 damages award was clearly intended to compensate ASI for the individual defendants' breaches of contract and fiduciary duty as well as for the Sage defendants' tortious interference with the Zilog opportunity. Moreover, the jury's award was not nominal. ASI was awarded a substantial amount of the lost profits it claimed for the Zilog opportunity wrongfully usurped by the Sage defendants. The Sage defendants nevertheless attempt to diminish completely the significance of ASI's damage award. ASI's damage award, however, clearly weighs very strongly in favor of its status as the prevailing party in this action.

#### a. ASI Was Awarded Damages On All Claims Against Roberts, Yearsley, And Tiffany

The Sage defendants contend the jury awarded ASI damages only as to ASI's claim for tortious interference with prospective economic expectancy and, for this reason, ASI cannot be the prevailing party because it failed to prove the requisite damages element for both its breach of contract and breach of fiduciary duty claims against the individual defendants. These contentions do not comport with the facts and issues decided by the jury.

As ASI has already argued in support of its pending motion for costs and attorney's fees, the jury could not have found ASI was damaged by the Sage defendants' wrongful interference with the prospective economic expectancy in contracting with Zilog without also finding ASI was damaged by the individual defendants breaching their duties not compete. Therefore, in awarding ASI damages, the jury clearly intended to also award those damages for the individual defendants' breaching their duties not to compete. Nevertheless, because the jury apparently understood the Court's Jury Instruction

No. 28 prohibited them from entering the damage award for each of ASI's three claims against the individual defendants and required they enter the damages amount only once, the jury entered the damage amount only for the tortious interference with economic expectancy claim against all four of the Sage defendants.<sup>2</sup> Once again, rather than repeat its arguments verbatim, ASI refers the Court and incorporates herein by reference ASI's arguments at pages 5-8 of the Memorandum In Support of American Semiconductor, Inc.'s Motion for Costs and Fees Against the Sage Defendants (filed 02/04/15)). Despite the jury's confusion about how to enter the damages award, ASI is clearly the prevailing party on the issue of damages for all of its claims against the Sage defendants.<sup>3</sup>

b. The Jury Awarded ASI Substantial Damages

In awarding ASI \$195,175, the jury awarded ASI a substantial amount of the damages claimed for lost profits, which were not merely nominal damages. A party who is awarded less than all damages sought, but more than simply a nominal amount of those damages, may be determined the prevailing party. *See Oakes*, 152 Idaho at 546, 272 P.3d at 518 (considering that plaintiff received a damage award which was more than a nominal amount as a factor making him the prevailing party); *Bates v. Seldin*, 146 Idaho 772, 777, 203 P.3d 702,707 (2009) (holding the district court did not abuse its discretion in finding plaintiffs were the prevailing party under I.R.C.P. 54(d)(1)(B) although defendants proved an affirmative defense preventing the jury from awarding plaintiffs damages for

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<sup>2</sup> For this reason, ASI has also moved to clarify the verdict to reflect the jury's intent and also to amend/correct the judgment to state that the damages were awarded for ASI's breach of contract and breach of fiduciary duty claims as well as for the tortious interference with economic expectancy claim. The motions to clarify the verdict and amend/correct the judgment, together with supporting affidavits, are now pending before the Court and are also incorporated herein by reference.

<sup>3</sup>In support of the Sage defendants' motion to disallow, the assert that the jury could have found against Roberts, Yearsley, and Tiffany on ASI's tortious interference with prospective economic claim based upon Roberts' pre-employment commitment to help develop ASI's design engineering service business. This assertion is absurd in light of the claims, the evidence, the applicable jury instructions, and the fact that the jury could not have found against all three individual defendants based solely on the pre-employment obligation undertaken only by Mr. Roberts.

breach of contract and plaintiffs' recovery for unjust enrichment was substantially less than they sought in the action); *Lickley v. Max Herbold, Inc.*, 133 Idaho 209, 210-11, 213-14, 984 P.2d 697, 698-99, 701-02 (1999) (upholding the trial court's determination that plaintiff was the prevailing party despite plaintiff's being awarded only \$33,000 of the \$81,000 he had originally requested; *Lower Payette Ditch Co. v. Harvey*, 152 Idaho 291, 298, 271 P.3d 689, 695 (2012) (recognizing as a general matter that "a party that recovers less than the amount requested can still be a prevailing party" and, therefore, "the failure of a plaintiff to recover all of the relief requested obviously does not automatically make the defendant the prevailing party.") (citing *Collins v. Jones*, 131 Idaho 556, 559, 961 P.2d 647, 650 (1998)).

c. The Sage Defendants Did Not Prevail On The Issue Of ASI's Entitlement To Lost Revenues For Tool Costs

In an attempt to show they prevailed despite the jury's awarding ASI substantial damages, the Sage defendants have mischaracterized the damages issue decided by the jury.

In this action, ASI sought relief consisting of lost profits from the Zilog opportunity, which was wrongfully usurped by the individual defendants through their competing company, Sage. At trial, there was no dispute that lost "net profits" was the measure of ASI's damages, and the jury was instructed only as to that measure of damages for all of ASI's claims. *See* Final Jury Instructions (filed 01/16/2015), Instruction No. 27. Revenue for tool costs was one component of the prospective Zilog contract revenue from which ASI would have derived the lost profits claimed at trial. There was no dispute that tool costs could properly be included as a component of ASI's lost profits measure of damages. Thus, ASI claimed tool costs at trial. Although tool costs were a significant part of ASI's total lost profits, ASI also claimed a substantial amount of lost profits in addition to those attributable

to tool costs, and the jury gave ASI a large award for lost profits. The Sage defendants are simply speculating the damages awarded to ASI did not include any tools costs.

Furthermore, the Sage defendants completely ignore the fact that the jury was never actually presented with the issue as to whether or not Zilog would have paid ASI for tool costs had it contracted with ASI instead of Sage. As the defendants and the Court are well aware, although defendants raised as a defense that Zilog would not have needed to pay ASI for the tool costs, during discovery, ASI was nevertheless precluded from obtaining Zilog's tool licensing information relevant to rebutting Zilog's conclusory assertion that it would not have required ASI to provide tools.<sup>4</sup> Again, at trial, ASI was precluded from questioning Zilog's principal witness David Staab about the terms governing the use of tools Zilog supposedly provided for the individual defendants' work on the subject project. Consequently, although defendants' damages expert's lost profits calculation did not include tool costs, the issue as to what amount of tool costs Zilog would have paid in contracting with ASI was never fully presented and litigated on the merits before the jury. Therefore, the Sage defendants cannot properly assert that the jury decided ASI was not entitled to recover tool costs as part of its lost profits.

For these reasons, the Sage defendants' misleading attempts to diminish the significance of ASI's damages award should be disregarded.

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<sup>4</sup> On April 18, 2014, ASI filed a motion to compel asking that Zilog be ordered to produce documents and information related to Zilog's tool licenses. That motion was heard and denied by the Court on May 2, 2014. *See also* Order Re: Plaintiff's Motions to Compel Production of Documents by Zilog and (2) Resumption of Zilog's Rule 30(b)(6) (filed 06/18/2014). Because defendants persisted in asserting Zilog's available tools as a defense to ASI's damages, ASI filed a motion in limine to preclude defendants from arguing the defense before the jury without turning over the applicable tool licenses so that ASI could properly prepare to rebut the defense. *See* ASI's Motion In Limine No. 11 Re: Undisclosed Licenses and Memorandum In Support of Motion In Limine No. 11 Re: Undisclosed Licenses (filed 10/31/2014); Sage Defendants' Opposition to ASI's Motion In Limine No. 11 (filed 11/07/14); Zilog Inc.'s Opposition to ASI's Motion In Limine No. 11 Re: Undisclosed Licenses. The Court never ruled on ASI's motion in limine. At trial, defendants persisted in asserting Zilog would not have paid ASI for tools, but the Court nevertheless precluded ASI from eliciting any testimony relevant to the tools issue from Zilog's David Staab, who was the principal decision maker for outsourcing the subject engineering work. (ASI has ordered a copy of the trial transcript and will provide the aforementioned portions of the trial proceedings relating to tools in a supplemental filing supporting this motion.)

d. The Sage Defendants' Offer Of Judgment Is Irrelevant

The Sage defendants assert their offer of judgment served before trial on December 12, 2014, supports the position that they prevailed on the issue of damages.

An offer of judgment may be one of the factors in the court's prevailing party analysis. *See e.g. Crump v. Bromley*, 148 Idaho 172, 219 P.3d 1188 (2009). In this case, however, the Sage defendants' offer of judgment actually supports ASI's position that it prevailed on the issue of damages.

Before trial, on December 12, 2014, the Sage defendants made an offer of judgment for \$100,000, which included all of ASI's claims recoverable against the Sage defendants, and, pursuant to Rule 68 of the Idaho Rules of Civil Procedure, also included any attorney's fees and costs awardable under Rule 54 of the Idaho Rules of Civil Procedure. *See Sage Defendants' Offer of Judgment* attached to the Affidavit of Gary L. Cooper In Support of Costs and Attorney's Fees (filed 02/04/15). The \$195,175 awarded to ASI by the jury is nearly twice the amount of the Sage defendants' offer of judgment. Moreover, the "adjusted award," which would include both ASI's damages award and its attorney's fees and costs incurred up to service of the offer of judgment, amounts to more than six times the offer of judgment. *See I.R.C.P. 68(b)*. Therefore, the Sage defendants' offer of judgment in no way supports the assertion that they are the prevailing party, but, in fact, supports ASI's position that it is the prevailing party. *See Zenner v. Holcomb*, 147 Idaho 444, 450, 210 P.3d 552, 558 (2009) (holding in determining plaintiffs were the prevailing party, the trial court properly considered that plaintiffs' jury verdict together with attorney's fees and costs exceeded defendants' offer of judgment).

4. **The Sage Defendants Did Not Prevail On ASI's Claims Dismissed Before Trial**

The Sage defendants assert ASI's dismissal of certain claims before trial should be considered as weighing in favor of finding them the prevailing parties. However, as has long been established, in

determining the prevailing party under Rule 54(d)(1)(B):

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Mere dismissal of a claim without trial does not necessarily mean that the party against whom the claim was made is the prevailing party for the purpose of awarding costs and fees. Dismissal of a claim may be but one of many factors to consider. When the claim was dismissed may be another.

*Chenery v. Agri-Lines Corp.*, 106 Idaho 687, 692, 682 P.2d 640, 645 (Ct. App. 1984); *Eighteen Mile Ranch*, 141 Idaho at 719, 117 P.3d at 133 (quoting *Chenery v. Agri-Lines Corp.*, 106 Idaho 687, 692, 682 P.2d 640, 645). For the reasons further discussed below, the mere dismissal of ASI's claims before trial does not mean the defendants successfully defended and prevailed on those claims. The claims were not adjudicated on the merits. Nor did ASI concede it was not entitled to recovery on those claims. Furthermore, ASI's voluntary dismissal of those claims well in advance of trial does not weigh in the Sage defendants' favor. Rather, the most weight should be given to ASI's having prevailed on the pivotal issues of liability, causation, and damages in this case.

a. Roberts, Yearsley, and Tiffany Did Not Prevail On ASI's Claim For Breach of Implied Covenant of Good Faith and Fair Dealing

ASI's claim for breach of the implied covenant of good faith and fair dealing alleged that in breaching their contractual obligations under the ECA, including the duty not to compete under Clause 7, Roberts, Yearsley, and Tiffany also breached the ECA's implied covenant of good faith and fair dealing. See Second Amended Complaint and Demand for Jury Trial ("Second Amended Complaint"), ¶¶ 75-79. The Court entered a directed verdict on this claim at trial on the basis that the claim was duplicative and sought identical relief as ASI's breach of contract claims against Roberts, Yearsley, and Tiffany. However, because ASI prevailed on its breach of contract claim underlying the breach of implied covenant claim, the individual defendants did not prevail on the questions of liability and damages put at issue by the breach of implied covenant claim.

Furthermore, because the breach of implied covenant of good faith and fair dealing claim relied upon the same evidence as ASI's breach of contract and breach of duty of loyalty claims, the individual defendants did not incur any additional attorney's fees and costs specifically attributable to that claim. Therefore, the individual defendants cannot claim prevailing party status based upon dismissal of ASI's breach of implied covenant of good faith and fair dealing claim or any attorney's fees and costs in connection with that claim.

b. The Sage Defendants Did Not Prevail On ASI's Claim For Improper Appropriation Of ASI's Name

ASI's claim for improper appropriation of its name alleged the Sage defendants improperly appropriated ASI's name for their own benefit by stating on Sage's website that they were working "in cooperation with American Semiconductor, Inc." *See* Second Amended Complaint, ¶¶ 100-102. This claim was brought in connection with the individual defendants' allegations that ASI allegedly gave them permission to use ASI's name and to otherwise engage in competitive activities through Sage. Although ASI moved to voluntarily dismiss the claim well before trial (*see* Motion for Voluntary Dismissal filed 08/19/2014), the underlying issue of the individual defendants' liability for breaching their duty not to compete continued to be litigated through trial to a verdict in ASI's favor. Therefore, the Sage defendants in no way prevailed on ASI's improper appropriation of name claim. Moreover, because the improper appropriation claim involved activities also put at issue by ASI's breach of contract and breach of fiduciary duty claims, the Sage defendants did not incur any additional attorney's fees and costs specifically attributable to defending the claim.

c. None Of The Defendants Prevailed On ASI's Claim For Unjust Enrichment

ASI's claims against all defendants seeking recovery for unjust enrichment was brought as an alternative to ASI's other claims for relief. *See* Second Amended Complaint, ¶¶ 103-113. ASI moved to

voluntarily dismiss the unjust enrichment claim well before trial. *See* Motion for Voluntary Dismissal (filed 08/19/2014). The jury found ASI was entitled to its requested relief in the form of damages. Moreover, because the unjust enrichment claim was based upon the same allegations as ASI's other claims for relief, the Sage defendants did not incur any additional attorney's fees and costs specifically attributable to defending the claim. Therefore, ASI's dismissal of its unjust enrichment claim does not support the Sage defendants' contention that they are the prevailing parties.

d. The Sage Defendants Did Not Prevail On ASI's Claim For Violation Of The Consumer Protection Act

ASI's claim against the Sage defendants for violation of the Consumer Protection Act also alleged the defendants misappropriated and misused ASI's name, including on Sage's website. *See* Second Amended Complaint, ¶¶ 114-119. As with ASI's claim for improper appropriation of ASI's name, the Consumer Protection Act violation claim was brought in connection with the individual defendants' allegations that ASI gave them permission to use its name and to otherwise engage in competitive activities through Sage. The Consumer Protection Act Claim was also an alternative basis for recovery.

Although ASI moved to voluntarily dismiss the claim well before trial (*see* Motion for Voluntary Dismissal filed 08/19/2014), the underlying issue of the individual defendants' liability for breaching their duty not compete continued to be litigated through trial to a verdict in ASI's favor. Therefore, the Sage defendants in no way prevailed on ASI's claim for violation of the Consumer Protection Act. Moreover, because the claim involved activities also at issue in ASI's breach of contract and breach of fiduciary duty claims, the Sage defendants did not incur any additional attorney's fees and costs specifically attributable to defending the claim. Therefore, ASI's dismissed

claim for violation of the Consumer Protection Act should not be given weight in the prevailing party analysis.

e. None Of The Defendants Prevailed On ASI's Claim For Declaratory Relief

ASI's Second Amended Complaint includes a cause of action for declaratory relief relating to interpretation and enforcement of the Assignment of Inventions Clause contained in the ECA. *See* Second Amended Complaint, ¶¶ 120 -126. ASI, however, did not specifically pursue the declaratory relief requested therein and, consequently, none of the parties prevailed or incurred any attorney's fees and costs attributable to that cause of action. Therefore, ASI's including a cause of action for declaratory relief in its Second Amended Complaint should not be given weight in the prevailing party analysis.

f. None Of The Defendants Prevailed On ASI's Claim For Injunctive Relief

ASI's Second Amended Complaint also includes a cause of action for injunctive relief. *See* Second Amended Complaint, ¶¶ 127-131. ASI, however, voluntarily dismissed this claim well before trial without moving for either preliminary or permanent injunctive relief and, consequently, none of the parties prevailed or incurred any attorney's fees and costs for proceedings relating to injunctive relief. Therefore, ASI's dismissed cause of action for injunctive relief should not be given weight in the prevailing party analysis.

g. The Sage Defendants Are Not Entitled To Any Attorney's Fees or Costs In Connection With ASI's Claim For Violation Of The Idaho Trade Secrets Act

The individual defendants claim to have prevailed on ASI's claim under the Idaho Trade Secrets Act. However, as they and the Court are well aware, ASI voluntarily dismissed the Trade Secrets Act claim months before trial. Although the defendants may assert opinions as to the claim's ultimate viability, the claim was not adjudicated on the merits; therefore, they cannot claim to have

prevailed on any of the disputed issues raised by the claim. Moreover, discovery and litigation of the Trade Secrets Act claim occurred mainly between ASI and Zilog, which ASI believed to have acquired the subject trade secrets. In fact, the Cooper & Larson, Chartered invoices submitted by the individual defendants contain entries totaling only \$5,696.00 for attorney's fees specifically attributable to defending ASI's Trade Secrets Act claim. See Exhibit E attached hereto. To the extent the individual defendants incurred attorney's fees in connection with discovery and motion practice involving technical issues relating to the engineering work they performed for Zilog, those technical issues pertained equally to whether or not they were competing with ASI through Sage by providing the same type of services ASI would have provided to Zilog. The jury found the individual defendants and Sage were wrongfully competing with ASI. Therefore, ASI's pre-trial dismissal of its Trade Secrets Act claim does not have import as to who ultimately prevailed in the action – the party that prevailed being ASI.<sup>5</sup>

##### **5. ASI Prevailed On The Sage Defendants' Counterclaims**

In addition to prevailing on all three of its claims against the individual defendants and Sage, ASI also undisputedly prevailed on Sage's two counterclaims for tortious interference with contract and unjust enrichment. See *Oakes*, 152 Idaho at 546, 272 P.3d at 518 (finding plaintiff's defeating the defendant's counterclaim supported finding plaintiff was the prevailing party entitled to attorney's fees and costs) (citing *Bates v. Seldin*, 146 Idaho 772, 774, 777, 203 P.3d 702, 704, 707 (2009) and *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 718-19, 117 P.3d 130, 132-33 (2005)).

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<sup>5</sup>ASI has filed an objection to the Sage defendants' purported joinder with Zilog's motion for attorney's fees relating to the Trade Secrets Act claim and ASI denies the Sage defendants have any entitlement to claim attorney's fees on any basis asserted by Zilog.

The jury clearly did not conclude ASI was liable for *wrongfully* intentionally interfering with Sage's contract with Zilog. Otherwise, the jury would not have found Roberts, Yearsley, and Tiffany's performing that contract constituted wrongful competition and, along with Sage, wrongful usurpation of the Zilog opportunity. In other words, ASI's interference could only have been wrongful if the Sage defendants had a right to interfere with ASI's Zilog opportunity, and the jury found they had no such right, or justification, to interfere. Thus, the jury did not award the Sage defendants any damages for ASI's intentional interference, but instead awarded ASI damages for the Sage defendants' wrongful interference. Likewise, the jury did not award the Sage defendants any relief sought by their unjust enrichment claim.

ASI's prevailing on the Sage defendants' counterclaims weighs strongly in favor of finding ASI to be the prevailing party.

**E. Roberts, Yearsley, And Tiffany Have Failed To Comply With I.R.C.P. 54's Requirements In Requesting Attorney's Fees For Legal Services Provided By Russell G. Metcalf**

Rule 54(e)(5) of the Idaho Rules of Civil procedure requires that any request for attorney's "shall be supported by an affidavit of *the attorney* stating the basis and method of computation of the attorney fees claimed." I.R.C.P. 54(e)(5) (emphasis added). The individual defendants' request attorney's fees in the amount of \$6,020 incurred for legal services provided by the Sage defendants' attorney Russell G. Metcalf, who initially represented them in this action before Cooper & Larson, Chartered took over representation. But Mr. Metcalf has not submitted an affidavit to support this fee request stating the basis and method of computation for the fees he has charged the Sage defendants. Instead, Mr. Metcalf's billing invoices are simply attached to the affidavit of Gary Cooper, who purports to state the basis and method of computation for those fees. *See* Affidavit of Gary L. Cooper In Support of Costs and Attorney Fees (filed 02/03/2015) at pp. 4, 5. Under Rule 54(e)(5), however,

the attorney whose fees are being claimed must submit the required affidavit explaining the basis method of computation of his or her fees. *See id.* Therefore, because the individual defendants have failed to request Mr. Metcalf's attorney's fees in accordance with Rule 54 and the deadline for properly requesting those fees has long since passed, the fees should be disallowed.

**F. Roberts, Yearsley, And Tiffany Are Seeking Attorney's Fees Which Cannot Properly Be Awarded In This Case**

**1. Roberts, Yearsley, and Tiffany's Insurance Defense Counsel Can Recover Only Those Reasonable Attorney's Fees Incurred By Their Insurers**

Roberts, Yearsley, and Tiffany assert their insurance defense counsel, Gary Cooper, should be awarded \$90,112.00 more than the attorney's fees actually incurred for his services by the Sage defendants' insurers, Farmers Insurance and State Farm, in order to compensate Mr. Cooper at his usual hourly rate of \$250.00 instead of the \$160.00 hourly rate under his agreement with the insurers.

Defendants rely on an Idaho Court of Appeals decision from 1983, *Decker v. Homeguard Systems*, 105 Idaho 158, 666 P.2d 1169 (Ct. App. 1983). The *Decker* case concerned an award of attorney's fees to the prevailing plaintiffs in an Idaho Consumer Protection Act action, and the plaintiffs had a contingency fee agreement with their counsel. The Court of Appeals held the trial court did not abuse its discretion by awarding attorney's fees based upon what it determined to be plaintiffs' counsel's reasonable hourly rate, which exceeded what counsel would have been paid pursuant to the contingency fee agreement. *See id.* at 162-63, 1173-74. Clearly, the question as to what hourly rate should be paid to plaintiff's counsel when there is a contingency fee agreement involves unique considerations such as the attorney's assuming the risk of receiving no compensation for taking the case and whether payment under the contingency fee would be sufficient to compensate the attorney for all hours actually invested in the case. The question of an insurance defense counsel's reasonable

hourly rate does not involve any of these considerations. An insurance defense panel counsel makes a business decision to accept the hourly rate offered by the insurance company, does not undertake the risk that s/he will not be compensated, and is compensated based upon the number of hours s/he works on the case. Thus, the Court of Appeal's reasoning in the *Decker* case does not apply to the individual defendants' claim that their insurance defense counsel should receive more than his contracted hourly rate of compensation.

The individual defendants do not cite to any authority supporting their assertion that an insurance defense counsel is entitled to claim a higher hourly rate than that which the insurance company has contracted to pay and has actually incurred. Therefore, the individual defendants' claim that their insurance defense counsel should be compensated at a higher hourly rate is unsupported and such additional fees, which were not actually incurred by Farmers Insurance and State Farm, should be disallowed.

**2. Roberts, Yearsley, and Tiffany's Insurance Defense Counsel Should Not Recover Travel Costs**

The attorney's fees claimed by the individual defendants for legal services provided by Cooper & Larson, Chartered include \$29,901.00 in fees charged for time spent by Gary Cooper and associate attorneys in traveling between the firm's offices in Pocatello, Idaho, and Boise. (An itemization of the attorney's fees claimed for travel time is attached hereto as Exhibit A.) These attorney's fees were not reasonably and necessarily incurred because the Sage defendants' insurers could have retained panel counsel located in Boise where this case is venued. The individual defendants have not presented any authority which supports requiring ASI to absorb these substantial travel costs incurred simply because their insurers preferred to use panel counsel located in another venue 235 miles away. Therefore, the \$29,901 in fees incurred for the Cooper & Larson attorneys' travel time should be disallowed.



**3. Roberts, Yearsley, and Tiffany's Requested Attorney's Fees Include Billing Entries For Other Unrelated Matters**

The attorney's fees claimed by the individual defendants for legal services provided by Cooper & Larson, Chartered include \$1,104.00 in fees which were clearly incurred for work on other unrelated matters. An itemization of the billing entries for a "hearing in Soda Springs," "reviewing H&E Crane documents," and a motion for default judgment is attached hereto as Exhibit B. These attorney's fees are undisputedly not properly claimed and should be disallowed.

**4. Roberts, Yearsley, and Tiffany Should Not Recover Attorney's Fees Incurred In Prosecuting Their Counterclaims**

The attorney's fees claimed by the individual defendants for legal services provided by Cooper & Larson, Chartered include \$3,136.00 in fees charged for time specifically identified as relating to prosecution of the Sage defendants' counterclaims. (An itemization of the attorney's fees claimed in connection with prosecuting the Sage defendants' counterclaims is attached hereto as Exhibit C.) As already discussed above, ASI undisputedly prevailed on the Sage defendants' counterclaims. There is no basis for the individual defendants to recover any attorney's fees for prosecuting their unsuccessful counterclaims. In fact, awarding those fees would amount to assessing an unwarranted penalty against ASI for which there is no basis under the Rules. Therefore, the attorney's fees specifically attributable to prosecuting the counterclaims must be disallowed.<sup>6</sup>

**5. Roberts, Yearsley, and Tiffany Should Not Recover Attorney's Fees and Costs Incurred In Connection With Their Retained Expert John Janzen**

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<sup>6</sup>The claimed attorney's fees for Mr. Metcalf also include \$735.00 specifically attributed to prosecuting the Sage defendants' counterclaims. See Exhibit C. Those fees should also be disallowed because they were not properly requested under Rule 54.

Roberts, Yearsley, and Tiffany are claiming \$928.00 in attorney's fees (see Exhibit D) and \$1,535.49 in costs incurred in connection with retention of their purported expert John Janzen. As discussed in ASI's motion in limine to exclude Mr. Janzen's testimony at trial, Mr. Janzen's opinions were irrelevant to the issues in this case and also speculative, conclusory, and unsubstantiated by the facts. See Memorandum In Support of ASI's Motion In Limine No. 1 Re: Defense Expert John J. Janzen (filed 10/31/14). Although the Court never ruled on ASI's motion in limine, the Sage defendants nevertheless chose not to attempt offering Mr. Janzen's testimony at trial. Apparently, they recognized his opinions were irrelevant and unlikely to further their case in any substantive way.

For these reasons, the attorney's fees and costs Roberts, Yearsley, and Tiffany incurred in retaining Mr. Janzen were not reasonably and necessarily incurred in defending this action and, therefore, those costs and fees should be disallowed.

**6. Roberts, Yearsley, and Tiffany Are Not Permitted To Recover Attorney's Fees For Post-Trial Motions**

In moving for costs and attorney's fees, Roberts, Yearsley, and Tiffany assert they should be permitted to supplement their pending fee request with an additional request for attorney's fees incurred in connection with post-trial motion practice. Then, on February 18, 2015, they filed the Affidavit of John D. Oborn Re: Additional Costs and Fees purporting to request an additional \$6, 556.06 in attorney's fees incurred in pursuing and defending post-trial motions.

In Idaho, post judgment attorney's fees are not allowed by any statute or rule of civil procedure. See *Allison v. Biggs*, 121 Idaho 567, 826 P.2d 916 (1992). Therefore, Roberts, Yearsley, and Tiffany's request for post judgment attorney's fees for post-trial motion practice should be disallowed and stricken.

### III. ROBERTS, YEARSLEY, AND TIFFANY HAVE FAILED TO ESTABLISH ASI'S ATTORNEYS' HOURLY RATES ARE UNREASONABLE

The Sage Defendants argue that "ASI is requesting attorney fees based on hourly rates that do not reflect rates that [sic] commensurate with the skill and experience of similar attorneys in the area and that "the hourly rates charged by ASI are significantly higher than the rates charged by counsel for the Sage Defendants and Zilog." Memorandum in Opposition to ASI's Request for Costs and Attorney Fees, at pp. 8-9. In making these arguments, the Sage Defendants rely on an affidavit submitted by Mr. Don Farley. But Mr. Farley's affidavit, when fairly considered, does not support those sweeping conclusions.

*First*, nowhere in his affidavit does Mr. Farley discuss or even acknowledge the level of skill and experience of ASI's attorneys, even though he testified to having reviewed the Affidavit of John Zarian and the 39 exhibits attached thereto, including detailed professional profiles for each attorney. Mr. Farley states that he reviewed certain papers filed (or served) in this case. Then, supposedly based on (a) his reported review of those selected filings and (b) his knowledge and experience in similar cases, Mr. Farley opines as to what partners and associates "with similar experience" would have charged without considering what attorneys at law firms similarly situated to Parsons Behle would have charged for matters involving complex commercial litigation.

*Second*, based on the statements made in his Affidavit, it appears that Mr. Farley is an experienced attorney who has practiced in this community for an extended period of time. That said, Mr. Farley's subjective opinions regarding hourly rates for ASI's counsel are at variance with awards made in similar cases for work done in this very community. For example, while Mr. Farley opines that Mr. Zarian's true hourly rate should be \$250 an hour, Mr. Husch submitted a declaration filed in support of Zilog's motion for attorney fees and costs where he notes that Judge Winmill found Mr.

Zarian's rate of \$320 an hour to be reasonable in a case of comparable complexity. Declaration of Gerald T. Husch in Support of Zilog, Inc.'s Motion for Attorney Fees and Costs (filed, Feb. 4, 2014) ("Husch Decl."), at pp. 6-7. As if to emphasize the reasonableness of that rate, Mr. Husch opines that an hourly rate of up to \$395 for a litigation attorney with 20 to 35 years' experience, and with respect to cases such as this one, is reasonable. *Id.* Mr. Husch's opinions are largely consistent with Mr. Zarian's. See Affidavit of John N. Zarian in Support of American Semiconductor, Inc.'s Motion for Costs and Fees Against the Sage Defendants (filed, Feb. 4, 2015), at ¶¶ 45-46.

Further, in support of his opinions concerning hourly rates, Mr. Husch cites to yet another instance where Judge Winmill found an hourly rate of between \$245 and \$260 to be reasonable in a case of comparable complexity for a senior associate level attorney practicing in this very community. See "Husch Decl.", at p. 6-7. With all due respect to Mr. Farley, ASI submits that Judge Winmill, an impartial arbiter who has reviewed a multitude of fee petitions from attorneys in this community, is far better placed than he (Mr. Farley) to assess the reasonableness of hourly rates charged by similarly situated attorneys in this market. As Zilog's submissions confirm, the hourly rates charged by ASI's counsel in this action are in line with prevailing charges for like work in this community.

*Third*, although Mr. Farley does note that he reviewed selected filings in this case, his affidavit is silent as to his views concerning the level of complexity of this case. Without knowing how Mr. Farley views this case, neither ASI nor the Court can meaningfully assess his conclusions concerning prevailing hourly rates. Therefore, Mr. Farley's advocacy for artificially low hourly rates for ASI's counsel, apparently without accounting for complexity of the case, should be discounted.

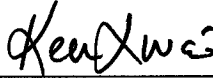
#### IV. CONCLUSION

For the reasons set forth herein and those already presented in support of ASI's pending motion for costs and attorney's fees, ASI respectfully requests the Court deny both the Sage defendants'

motion for costs and attorney's fees and their motion to disallow ASI's requested costs and attorney's fees.

DATED this 20<sup>th</sup> day of February, 2015.

PARSONS BEHLE & LATIMER

By 

John N. Zarian

Kennedy K. Luvai

Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper COOPER & LARSEN CHARTERED 151 North Third Avenue, 2nd Floor P.O. Box 4229 Pocatello, ID 83205-4229 Telephone: (208) 235-1145 Facsimile: (208) 235-1182 <i>Attorney for Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: gary@cooper-larsen.com barbie@cooper-larsen.com
Daniel W. Bower Chad E. Bernards STEWART TAYLOR & MORRIS PLLC 12550 W. Explorer Drive, Suite 100 Boise, ID 83713 Telephone: (208) 345-3333 Facsimile: (208) 345-4461 <i>Attorney for Counterclaimants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: dbower@stm-law.com chad@stm-law.com suzie@stm-law.com
Stephen R. Thomas Gerald T. Husch MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD. P.O.. Box 829 Boise, ID 83701-0829 Telephone: (208) 345-2000 Facsimile: (208) 385-5384 <i>Attorneys for Defendant Zilog, Inc.</i>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email: srt@moffatt.com gth@moffatt.com

  
Kennedy K. Luvai

# **EXHIBIT A**

### TRAVEL COSTS

Date	Description	Amount
02/23/2012	Travel to Nampa to meet with clients/insureds (split 50% with another case)	\$304.00
02/24/2012	Travel to Pocatello from Nampa (split 50% with another case)	\$304.00
05/25/2012	Travel to and from Boise for hearing on motion to compel	\$1,208.00
10/05/2012	Travel to and from Boise for hearing on motion for protective order	\$1,088.00
09/06/2013	Travel from Boise to Pocatello after hearings on motion to compel	\$608.00
01/19/2014	Drive to and from Boise for meeting (apportioned 50% with another case)	\$512.00
01/20/2014	Drive to and from Boise for mediation (apportioned 50% with another case)	\$512.00
02/05/2014	Drive to Boise to meet with clients re: preparation for 30(b)(6) depositions	\$544.00
02/07/2014	Drive to Pocatello following deposition prep in Boise	\$544.00
02/10/2014	Drive to Boise for depositions	\$575.00
02/13/2014	Drive to Pocatello after depositions in Boise	\$544.00
03/03/2014	Travel from Salt Lake City to Boise for continuation of Zilog 30(b)(6) deposition (billed at 50% - travel time 1.5 hours)	\$128.00
03/04/2014	Drive to Pocatello after deposition	\$512.00
03/11/2014	Drive to Boise for depositions	\$512.00
03/14/2014	Drive from Boise to Pocatello after depositions and meetings	\$544.00
04/01/2014	Drive to Boise to prepare Lloyd and Perryman for depositions	\$512.00
04/03/2014	Drive from Boise to Pocatello after deposition preparation meeting	\$512.00
04/24/2014	Drive to Boise for Evelyn Perryman deposition	\$480.00
04/24/2014	Drive from Boise to Pocatello	\$496.00
05/02/2014	Drive to and from Boise for hearing on motion to compel	\$1,088.00
05/04/2014	Drive to Boise for Perryman and Lloyd depositions	\$576.00
05/05/2014	Drive from Boise to Pocatello	\$512.00
05/13/2014	Drive to Boise after deposition prep and depositions (apportioned 50% with another case, billed at 50% - 3.5 total travel time)	\$144.00



05/14/2014	Drive to Pocatello after deposition prep and depositions (apportioned 50% with another case, billed at 50% - 3.4 total travel time)	\$144.00
06/09/2014	Drive from Boise to Pocatello after deposition	\$448.00
06/18/2014	Drive to Boise for depositions	\$512.00
06/20/2014	Drive to Pocatello after depositions in Boise	\$496.00
06/24/2014	Drive from Pocatello to Boise for depositions	\$512.00
06/27/2014	Drive from Boise to Pocatello after depositions	\$512.00
07/17/2014	Drive to Boise for oral argument on motion to add claim for punitive damages	\$512.00
07/18/2014	Drive from Boise to Pocatello after oral argument on motion to add claim for punitive damages and motion for sanctions	\$512.00
08/19/2014	Drive to Boise for expert interview (3.2 hours, split 50% with another case)	\$256.00
08/20/2014	Drive to Pocatello from Boise after meeting (3.2 hours, split 50% with another case)	\$256.00
08/25/2014	Drive from Pocatello to Boise for depositions (split 50% with another case)	\$288.00
08/27/2014	Drive from Boise to Pocatello after deposition (3.4 hours, split 50% with another case)	\$288.00
09/25/2014	Drive from Pocatello to Boise for hearing on pending motions	\$544.00
09/26/2014	Drive from Boise to Pocatello after motion for summary judgment hearings	\$512.00
10/06/2014	Drive to Boise for witness preparation and defend expert's depositions	\$544.00
10/08/2014	Drive from Boise to Pocatello after depositions of experts	\$512.00
10/14/2014	Drive to Boise for ASI 30(b)(6) deposition	\$575.00
10/15/2014	Drive from Boise to Pocatello after 30(b)(6) deposition	\$480.00
10/24/2014	Drive to Boise for mediation	\$576.00
10/25/2014	Drive from Boise to Pocatello after mediation	\$512.00
10/29/2014	Drive to Boise for deposition of Holland and Hoffman	\$560.00
10/30/2014	Drive from Boise to Pocatello after depositions	\$512.00
11/04/2014	Drive from Pocatello to Boise for Reinstein deposition	\$512.00
11/05/2014	Drive from Boise to Pocatello after deposition	\$512.00
11/18/2014	Drive to Boise for pre-trial	\$608.00

11/14/2014	Drive from Boise to Pocatello after pre-trial	\$624.00
12/09/2014	Drive to and from Boise for oral arguments on remaining 8 motions in limine	\$1,126.00
12/18/2014	Drive to Boise for depositions of Roberts, Yearsley, Tiffany and Staab	\$544.00
12/19/2014	Drive from Boise to Pocatello after depositions	\$544.00
12/23/2014	Drive to and from Boise for pre-trial – apportioned with another case	\$512.00
01/03/2015	Drive to Boise for trial	\$576.00
01/03/2015	Drive from Pocatello to Boise for trial	\$416.00
01/15/2015	Drive to Pocatello from Boise after trial	\$416.00
01/16/2015	Drive from Boise to Pocatello after trial	\$608.00
<b>Subtotal:</b>		<b>\$29,901.00</b>

**EXHIBIT B**

**BILLING FOR ANOTHER CASE(S)**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
06/17/2014	Attend hearing in Soda Springs re: new trial date and other cutoffs	\$576.00
06/17/2014	Review and analyze H&E Crane documents for Pete Albrecht deposition	\$384.00
08/24/2014	Prepare motion for default certificate	\$16.00
08/24/2014	Prepare default certificate	\$16.00
08/24/2014	Prepare military service declaration	\$16.00
08/24/2014	Prepare military service order	\$16.00
08/24/2014	Prepare request to submit for decision	\$16.00
08/24/2014	Prepare motion for default judgment	\$16.00
08/24/2014	Prepare default judgment	\$16.00
08/24/2014	Prepare judgment	\$16.00
08/24/2014	Prepare findings of fact, conclusions of law and order	\$16.00
<b>Subtotal:</b>		<b>\$1,104.00</b>

**EXHIBIT C**

## COUNTERCLAIMS - COOPER

Date	Description	Amount
05/28/2014	Telephone with Barry Trout re: representing Sage on its counterclaim and retention of expert	\$32.00
05/28/2014	Telephone with Mark Shoquist re: representing Sage on its counterclaim and retention of expert	\$32.00
12/19/2014	Meet with Roberts, Yearsley and Tiffany to prepare for depositions	\$288.00
12/19/2014	Defend deposition of Roberts in Boise	\$288.00
12/19/2014	Defend deposition of Tiffany in Boise	\$224.00
12/19/2014	Defend deposition of Yearsley in Boise	\$192.00
01/13/2015	Attend Trial – Staab direct and cross examination, Offer of Proof on tools, Direct verdict notices, Counterclaim evidence through Roberts, Yearsley and Tiffany	\$1,504.00
01/14/2015	Attend Trial – direct and cross examination of Wilson on defense of counterclaim, direct and cross examination of Doug Hackler and Lorelli Hackler on rebuttal, motion for direct verdict on counterclaim	\$576.00
<b>Subtotal:</b>		<b>\$3,136.00</b>

### COUNTERCLAIMS - METCALF

Date	Description	Amount
04/20/2012	Commence outline and draft discovery requests to support counterclaims	\$420.00
04/23/2012	Review Plaintiff's Answer to Counterclaim in preparation for drafting additional Discovery Requests; Continue outline and draft discovery requests; Email draft of discovery requests to Gyle and Dave for review	\$315.00
<b>Subtotal:</b>		<b>\$735.00</b>

**EXHIBIT D**



**JOHN JANZEN**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
08/22/2014	Telephone conference with John Janzen re: substance of affidavit	\$64.00
08/22/2014	Prepare affidavit (3 pages)	\$128.00
08/25/2014	Finalize affidavit of John Janzen – email to him for signature	\$16.00
10/06/2014	Conference with John Janzen to prepare for deposition	\$288.00
10/07/2014	Defend deposition of John Janzen in Boise	\$432.00
<b>Subtotal:</b>		<b>\$928.00</b>

**EXHIBIT E**

**TRADE SECRET ACT CLAIM**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
05/08/2014	Telephone conference with Hush and Waton (Zilog's attorneys), Gyle Yearsley and Cooper to evaluate and discuss trade secret issues	\$192.00
05/28/2014	Review approximately 1500 pages of documents produced by ASI to support its claim that Sage misappropriated trade secrets from ASI	\$512.00
05/28/2014	Conference with Tiffany, Yearsley and Roberts re: technical discussion of what could be trade secret and how to pursue	\$144.00
05/29/2014	Telephone with Gerry Husch (Zilog attorney) re: modifying protective order to permit parties to view AEO documents on the ASI design and Zilog design that are at the heart of trade secret claim (very lengthy and technical discussion reviewing P510 83 pages of specifications)	\$96.00
06/04/2014	Research trade secrets and non-compete case laws	\$320.00
06/05/2014	Research trade secrets and non-compete cases	\$320.00
06/05/2014	Prepare questions for Defendants's depositions based on review of complaint and trade secret and non-compete case law	\$320.00
06/07/2014	Review and analyze specs for SP10 ASIC product (83 pages of technical data)	\$432.00
06/07/2014	Review and analyze literature on microprocessors, block diagrams ASIC products and products similar to SP10 ASIC	\$1,136.00
06/07/2014	Review confidentiality agreement, block diagrams re: trade secret claims and claim issues	\$640.00
06/09/2014	Review emails from clients re: trade secret issues	\$160.00
06/11/2014	Research trade secret and non-compete laws	\$160.00
06/14/2014	Review and analyze latest amended discovery responses disclosing trade secret which was allegedly misappropriated by the Sage Defendants (9 pages)	\$416.00
06/14/2014	Review and analyze lengthy email from William Tiffany re: analysis of latest disclosure of misappropriated trade secret	\$112.00
06/16/2014	Telephone conference with Husch and Eaton re: meet and confer with ASI about trade secret issues	\$80.00
06/16/2014	Review and analyze affidavit of Kennedy Luvia in support of ASI's opposition to Zilog's motion to compel re: trade secret issues	\$400.00
08/06/2014	Telephone conference with Husch, Luvia and Zarian re: status of trade secret claim	\$64.00
08/06/2014	Telephone conference with Husch re: trade secret claim	\$32.00

08/08/2014	Telephone conference with Zarian, Husch and Luvai re: trade secrets claim	\$64.00
08/08/2014	Email to clients and adjusters re: dropping trade secret misappropriation claim	\$32.00
08/28/2014	Prepare objection to proposed order permitting voluntary dismissal of counts including trade secrets (2 pages)	\$64.00
<b>Subtotal:</b>		<b>\$5,696.00</b>

**FEB 20 2015**

**CHRISTOPHER D. RICH, Clerk**  
By **KATRINA HOLDEN**  
DEPUTY

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
Andrea J. Rosholt, ISB No. 8895  
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25332.0000  
Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**NOTICE OF ERRATA REGARDING  
ZILOG, INC.'S MEMORANDUM OF  
FEES AND COSTS**

**NOTICE OF ERRATA REGARDING ZILOG, INC.'S MEMORANDUM  
OF FEES AND COST - 1**

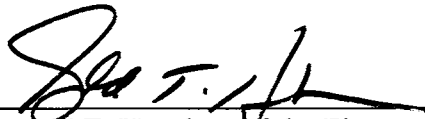
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Clerk: 3795277.1  
002094

Zilog, Inc., by and through its counsel of record, Moffatt, Thomas, Barrett, Rock & Fields, Chtd., hereby provides this notice of errata in the above-captioned matter. After Zilog, Inc. filed its Memorandum of Fees and Costs ("Zilog's Memo"), it came to the attention of undersigned counsel that there was an error contained therein. Specifically, undersigned counsel for Zilog, Inc. discovered the following:

1. At page 2, footnote 1, the hours billed by Stephen R. Thomas for the hours he was at the courthouse, that were not included as part of the fees requested in Zilog's Memo, is incorrectly listed as 85.9. The correct number of hours billed by Mr. Thomas for the hours he was at the courthouse, that were not included as part of the fees requested in Zilog's Memo, is 76.5.

DATED this 20th day of February, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2015, I caused a true and correct copy of the foregoing **NOTICE OF ERRATA REGARDING ZILOG, INC.'S MEMORANDUM OF FEES AND COST** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☒ (x) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
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Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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☐ ( ) Overnight Mail  
☐ ( ) Facsimile

  
\_\_\_\_\_  
Gerald T. Husch

**FEB 20 2015**

**CHRISTOPHER D. RICH, Clerk**  
By **KATRINA HOLDEN**  
DEPUTY

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
Andrea J. Rosholt, ISB No. 8895  
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25332.0000

Attorneys for Defendant Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
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Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S POST-HEARING  
MEMORANDUM REGARDING  
PENDING MOTIONS**

**ZILOG, INC.'S POST-HEARING MEMORANDUM REGARDING PENDING  
MOTIONS - 1**

Client: 3766563.1  
002097  
**ORIGINAL**



COMES NOW, Defendant Zilog, Inc. ("Zilog"), by and through undersigned counsel of record, and hereby files Zilog, Inc.'s Post-Hearing Memorandum Regarding Pending Motions.

#### **ATTORNEY FEES AND COSTS**

ASI does not deny that Zilog is the prevailing party as to all of ASI's claims against Zilog in this litigation pursuant to IRCP 54(d)(1)(A). Nor does ASI dispute that Zilog's entitlement to any of the \$19,929.72 that Zilog seeks as a matter of right under IRCP 54(d)(1)(C). ASI does contend that Zilog is not entitled to certain discretionary costs on the grounds that Zilog has not (1) shown that all of its discretionary costs were necessary, reasonable and exceptional and that the costs should, in the interests of justice, be assessed against ASI, or (2) provided adequate documentation regarding some of its discretionary costs.

The Declaration of Gerald T. Husch in Support of Zilog, Inc.'s Post-Hearing Memorandum Regarding Pending Motions ("2/20/15 Husch Dec.") provides additional information demonstrating that Zilog's discretionary costs were necessary, reasonable and exceptional and that the costs should, in the interests of justice, be assessed against ASI. In response to ASI's contention that Zilog has not provided adequate documentation of certain discretionary costs, Zilog has provided that documentation as Exhibits A through J to the 2/20/15 Husch Dec. The 2/20/15 Husch Dec. also addresses ASI's objections to Zilog's request for attorney fees.

#### **ASI'S COUNSEL HAS AGAIN VIOLATED RULE 11**

In its untimely Memorandum No. 1 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs Re: Rule 11 ("ASI's

Memorandum No. 1”), ASI counsel has once again violated Rule 11. In that memorandum, ASI states that “Zilog has not bothered to inquire from ASI or its counsel as to the nature and extent of that investigation or inquiry [allegedly by ASI or its counsel prior to the filing of the Second Amended Complaint].” ASI’s Memorandum No. 1, at 6. That statement is not well grounded in fact. The fact is that Zilog requested ASI to designate a witness to testify on that topic and ASI and its counsel refused to do so. *See* Declaration of Gerald T. Husch in Support of Zilog, Inc.’s Post-Hearing Memorandum Regarding Pending Motions (“2/20/15 Husch Dec.”), p. 8, ¶ 15. Exhibit K to the 2/20/15 Husch Dec. is a copy of Zilog’s Notice of 30(b)(6) Deposition of American Semiconductor, Inc., in which Zilog requested ASI to designate a witness to testify as to Deposition Topic 27, which was “27. Investigations conducted in connection with any allegations or factual assertions made by ASI in this litigation . . . .” Exhibit L to the 2/20/15 Husch Dec. is a copy of ASI’s Objections and Responses to Notice of Rule 30(b)(6) Deposition of American Semiconductor, Inc., in which ASI objected to Deposition Topic 27 and failed to designate a witness to testify as to Deposition Topic 27. Attached as Exhibit M to the 2/20/15 Husch Dec. is a copy of the transcript of the Rule 30(b)(6) Deposition of American Semiconductor, Inc., Testimony of Douglas R. Hackler Taken October 15, 2014, in which ASI’s counsel stated that he and ASI had not produced a witness on Deposition Topic 27 and did not intend to produce a witness on that topic, in response to Zilog’s questions . *Id.*, 83:9-85:7.

**ASI HAD NO FACTUAL OR LEGAL BASIS TO ASSERT THAT THE FABRICATED ASI BLOCK DIAGRAM IDENTIFIED AS ASI002685 CONSTITUTED ASI’S TRADE SECRET.**

On April 18, 2014, Zilog filed Zilog, Inc.’s Motion to Compel against plaintiff American Semiconductor, Inc. (“ASI”). In filing its motion to compel, Zilog sought to compel ASI to identify its alleged trade secret with reasonable specificity.

On April 21, 2014, Zilog received Plaintiff American Semiconductor, Inc.'s Seventh Supplemental Production of Documents, served via U.S. Mail on April 17, 2014. Declaration of Gerald T. Husch In Support of Zilog, Inc.'s Motion for Sanctions, filed July 3, 2014 ("7/13/14 Husch Dec., ¶ 3, Ex. A. As part of ASI's production, and without reference to the original discovery request, ASI served a CD containing, among other things, two block diagrams Bates numbered as ASI002685 and ASI002686. *Id.*

On April 28, Doug Hackler filed the Declaration of Doug Hackler in Support of American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion to Compel Opposition to Zilog's Motion to Compel ("4/28/14 Hackler Dec."), identifying ASI002685 as ASI's trade secret. Specifically, Mr. Hackler testified:

In this action, ASI has identified its claimed trade secrets to a requisite level of specificity in response to Zilog, Inc.'s ("Zilog") discovery requests. Specifically, ASI produced block diagrams showing how ASI's trade secrets, comprising its proprietary and confidential microcontroller integrated circuit, were used as an integral part of the design services that ASI engineers provided to Zilog secretly and without ASI's knowledge or acquiescence. The diagrams have been produced as ASI002685-86 appropriately designated CONFIDENTIAL AND ATTORNEYS' EYES ONLY, true and correct copies of which are attached hereto as Exhibit A and filed under seal along with this declaration.

4/28/14 Hackler Dec., ¶ 9.

These two block diagrams, that Mr. Hackler and Mr. Wilson *admit*<sup>1</sup> were created for this litigation, constituted the entire disclosure ASI intended to make. *See* American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion to Compel at p. 5-6 ("Here, ASI has

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<sup>1</sup> *See* Declaration of Doug Hackler In Support of ASI's Objection and Motion to Disallow Zilog's Request for Fees and Costs, ¶ 18; Declaration of Dale Wilson In Support of ASI's Objection and Motion to Disallow Zilog's Request for Fees and Costs, ¶ 7-8.

claimed as proprietary trade secrets, information comprising its integration of various elements comprising an advanced microcontroller integrated circuit, as shown in the record Bates-labeled ASI00268” and “there is simply no need for the Court to ‘enter an [o]rder compelling ASI to describe, with specificity or reasonable precision’ the claimed trade secrets at issue, *because ASI did so prior to the filing of the instant motion.*”) (emphasis added).

Despite representations at the hearing yesterday, ASI did not intend the block diagram identified as **ASI002685** to “represent” the information contained in its native files—as it had no intention of disclosing its native files, objected to Zilog’s motion to compel and represented to this Court that it was in compliance with its discovery obligations. *Supra*.

On May 2, 2014, the Court heard oral argument on Zilog’s motion to compel. On June 18, 2014, the Court entered its written Order Regarding Zilog, Inc.’s Motion to Compel (“Discovery Order”), granting in part Zilog, Inc.’s Motion to Compel. 7/13/14 Husch Dec., ¶ 4.

Thereafter, on May 23, 2014, ASI served Zilog with a thumb drive containing approximately 73,680 files from ASI and a disc containing documents marked ASI002687-ASI002790.<sup>2</sup> ASI represented that these files were ASI’s native files for the PS10\_ASIC. *Id.* ¶ 7.

What ASI did not disclose—and arguably never intended to disclose to Defendants or this Court was that ASI’s native files contained a true block diagram for the PS10\_ASIC that ASI claimed comprised its trade secret. That block diagram is attached as Exhibit R to the Declaration of Gerald T. Husch In Support of Zilog, Inc.’s Motion for Attorney Fees and Costs (filed 2/4/14). Presumably, this is because the ASI block diagram produced in

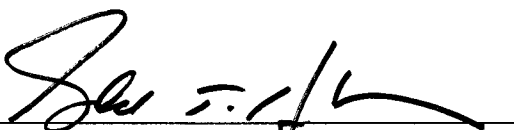
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<sup>2</sup> Note ASI **ASI002685** is not a part of ASI’s actual native file for the PS10\_ASIC.

this litigation as ASI's trade secret differs materially from the block diagram that is actually contained in ASI's product specification. *See* Declaration of Monte Dalrymple In Support of Zilog, Inc.'s Post-Hearing Memorandum Regarding Pending Motions, ¶¶5-8. The foregoing record demonstrates that ASI lacked a legal or factual foundation to introduce ASI002685 as ASI's claimed trade secret..

DATED this 20th day of February, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2015, I caused a true and correct copy of the foregoing **ZILOG, INC.'S POST-HEARING MEMORANDUM REGARDING PENDING MOTIONS** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

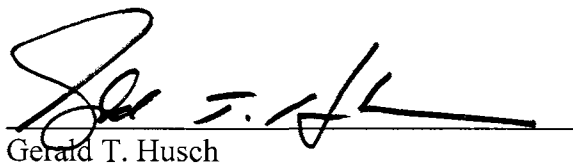
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Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
12550 W. Explorer Dr., Suite 100  
Boise, ID 83713  
Facsimile (208) 345-4461  
*Attorneys for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
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Boise, ID 83702  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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☐ ( ) Overnight Mail  
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Gerald T. Husch

Neuville Janet  
2/23/15

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
Andrea J. Rosholt, ISB No. 8895  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
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Telephone (208) 345-2000  
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srt@moffatt.com  
gth@moffatt.com  
ajr@moffatt.com  
25332.0000

Attorneys for Defendant Zilog, Inc.

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED \_\_\_\_\_ P.M. \_\_\_\_\_

FEB 20 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals,

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**DECLARATION OF DAVID R, STAAB  
IN SUPPORT OF ZILOG, INC.'S POST-  
HEARING MEMORANDUM  
REGARDING PENDING MOTIONS**

**DECLARATION OF DAVID R, STAAB IN SUPPORT OF ZILOG, INC.'S  
POST-HEARING MEMORANDUM REGARDING PENDING MOTIONS - 1**

Client: 3766794.1

002104  
ORIGINAL

DAVID R. STAAB declares and states as follows:

1. I am making this declaration on the basis of my personal knowledge as an employee of Zilog, Inc. ("Zilog") in support of Zilog, Inc.'s Post-Hearing Memorandum Regarding Pending Motions.

2. I have been employed by Zilog for approximately 15 years. I am currently Zilog's Vice President of R&D and MCU Architecture. I hold a bachelor of science degree in electrical engineering from Northwestern University and a master's degree in business from Santa Clara University. I was involved in all major phases of the Zilog Z8F6480/Z8F6482 development project (the "Project").

3. I am familiar with the business activities regarding the Zilog Z8F6480/Z8F6482 development project, and the documents generated with respect to the Zilog Z8F6480/Z8F6482 development project, that were routinely made and kept in the normal course of business.

4. As part of the Zilog Z8F6480/Z8F6482 project, a Strategic Business Session Meeting Produce Overview Proposal ("POP") for the Zilog F6480 was made and presented using a Power Point Presentation, dated November 28, 2010. Slide 8 of this presentation contains a drawing of the Block Diagram for the Zilog Z8F6480 microcontroller, illustrating the key design features of the product. This slide is dated November 22, 2010.


5. Attached hereto as **Exhibit A** is a true and correct copy of Slide 8 of the POP dated November 28, 2010, depicting the Block Diagram and key design features of the Z8F6480 microcontroller. **Exhibit A** was made and kept in the course of Zilog's regularly conducted business activity. **Exhibit A** is a type of record that is routinely made and kept in the course of Zilog's business, in accordance with Zilog's usual business practices. **Exhibit A** was



made on or about November 22, 2010, as stated on **Exhibit A**; and **Exhibit A** was made by a person with knowledge of the matters set forth in **Exhibit A**, or from information transmitted by a person with such knowledge who reported such knowledge in the regular course of Zilog's business.

I certify and declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 20th day of February, 2015.

  
\_\_\_\_\_  
David R. Staab

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2015, I caused a true and correct copy of the foregoing **DECLARATION OF DAVID R, STAAB IN SUPPORT OF ZILOG, INC.'S POST-HEARING MEMORANDUM REGARDING PENDING MOTIONS** to be served by the method indicated below, and addressed to the following:

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COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
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Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

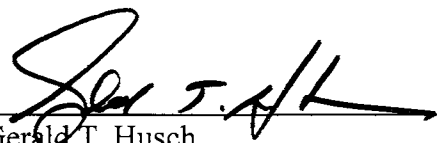
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*Attorneys for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

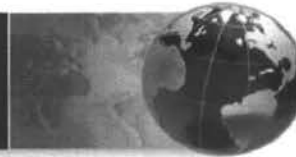
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\_\_\_\_\_  
Gerald T. Husch

# **EXHIBIT A**

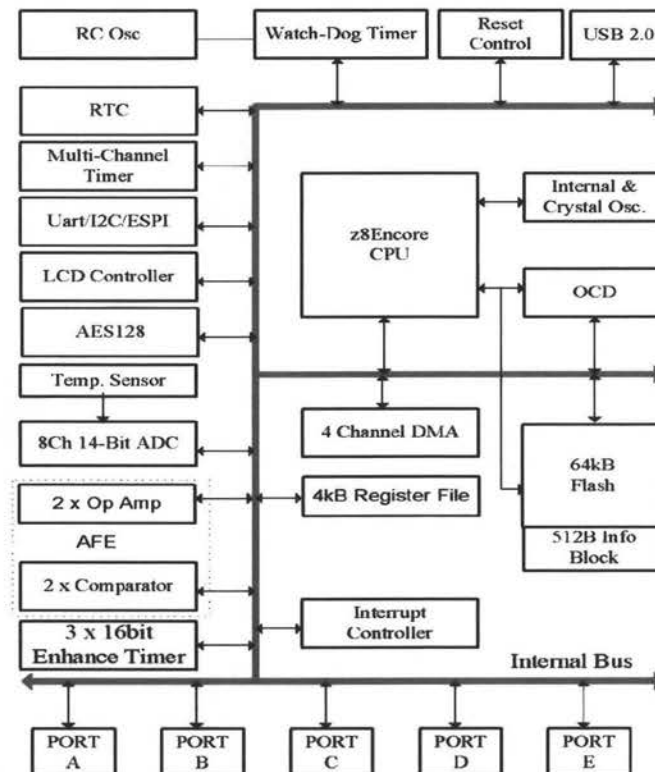


## Z8F6480 - Key Features



### Z8F2480 core, Current production rev AC with the following changes/updates

- Improve our internal IPO to operate up to 16Mhz and external clock to 25Mhz. Digital Clock control
- Increase the Flash Program memory size from 24K bytes to 64K bytes. Improve the NVDS operation, add support for a boot loader. Main Flash memory protection by disabling the DEBUG pin and any other flash access mode (i.e. Manufacturing flash program modes)
- AES accelerator module, This performs encryption and decryption of 128-bit data with 128-bit keys according to the Advanced Encryption Standard (AES) (FIPS PUB 197) in hardware. Plain text, Cipher Key, Cipher text.
- Real Time Clock module, support Counter and Clock modes
- Support for second SPI Port. Current Z8F2480 device has one SPI port.
- 8 Channel, 14bit SAR ADC 200kps, on and off chip voltage references
- Four channel DMA controller
  - Basic Op amp for front-end analog signal conditioning
- Integrated LCD Driver with Contrast control for up to 96 segments (Test LCD SoftBaugh SBLCA4)
- DALI Support/mode on UART ports
- UART RS485 Multi drop mode up to 250kbit/sec (DMX Support)
- USB 2.0 compliant interface, Support both Low Speed (1.5Mbps) and Full Speed (12Mbps)
  - Fix current Z8F1680/2480 errata.
- **Features we still need to review with core team**
  - Packages 64pin? version
  - Should we have a pin compatible F2480 version?
  - Software compatible?
  - mBus, CAN? RNG
  - Low power POR (POR current of 1680/2480 should be improved)
  - How about a 12 bit DAC
  - AC zero crossing detector



*Neville J. Smith*  
*MR 2/23/15*  
**ORIGINAL**

Gary L. Cooper - Idaho State Bar #1814  
 COOPER & LARSEN, CHARTERED  
 151 North Third Avenue, Second Floor  
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 Telephone: (208) 235-1145  
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 Email: [gary@cooper-larsen.com](mailto:gary@cooper-larsen.com)

*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
 Gyle Yearsley and William Tiffany*

Chad Bernards  
 STEWART TAYLOR & MORRIS, PLLC  
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 Facsimile: (208) 345-4461  
 Email: [chad@stm-law.com](mailto:chad@stm-law.com)

*Counsel for Counterclaimants*

NO. \_\_\_\_\_  
 A.M. \_\_\_\_\_ FILED P.M. 2:33

**FEB 20 2015**

CHRISTOPHER D. RICH, Clerk  
 By KATRINA HOLDEN  
 DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
 an Idaho Corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
 Idaho Corporation; ZILOG, INC., a  
 Delaware Corporation; DAVID ROBERTS,  
 GYLE YEARSLEY, WILLIAM TIFFANY,  
 and Defendants DOES I - X,

Defendants.

CASE NO. CV-OC-1123344

**AFFIDAVIT OF GARY L. COOPER  
 IN SUPPORT OF SANCTIONS  
 AGAINST ASI**

TR

SAGE SILICON SOLUTIONS, LLC, an )  
 Idaho limited liability company; DAVID )  
 ROBERTS, GYLE YEARSLEY, )  
 WILLIAM TIFFANY, individuals, )  
 )  
 Counterclaimants, )  
 )  
 vs. )  
 )  
 AMERICAN SEMICONDUCTOR, INC., )  
 an Idaho Corporation, )  
 )  
 Counterdefendant. )  
 \_\_\_\_\_ )

STATE OF IDAHO )  
 :ss  
 County of Bannock )

GARY L. COOPER, being first duly sworn on oath, deposes and states as follows:

1. I am the lead attorney for the Sage Defendants in this case and the information in this Affidavit is based on my personal knowledge.

2. The Defendants Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany (collectively "Sage Defendants") filed a Joinder with Zilog, Inc's Motion for Attorney Fees and Costs on February 5, 2014. That joinder was based on the conduct of American Semiconductor, Inc. ("ASI") and ASI's counsel in pursuing a trade secret claim against the Sage Defendants and Zilog that was ultimately dismissed after ASI failed to comply with the Court's order compelling ASI to disclose with particularity its alleged trade secret.

3. The Second Amended Complaint was filed on July 2, 2013. The hearing on the motion to dismiss the trade secret claim was held on September 26, 2014. In that time period, the Sage Defendants incurred attorney fees of \$95,193.00. In my opinion, at least 60% of those attorney fees,

AFFIDAVIT OF GARY L. COOPER IN SUPPORT OF SANCTIONS AGAINST ASI - PAGE 2

or \$57,115.80, were incurred in defending against the trade secret claim that was eventually dismissed. The basis for my opinion is that based on discovery responses and communication with counsel for ASI, during the this time frame, the alleged value of the "trade secret" claim was substantially greater than the damages alleged from the contract and tort claims. Based on discovery responses by ASI in February 2013, ASI was claiming all "design work" performed by the Sage Defendants qualified as "trade secrets." In May 2014, ASI produced thousands of pages of code which it claimed included the trade secrets the Sage Defendants had misappropriated. My office spent significant time in depositions and with an expert, Monte Dalrymple, attempting to learn specifically what trade secret had been allegedly misappropriated by the Sage Defendants. Conservatively, the word "design" came up hundreds of times in the depositions of the Sage Defendants and the ASI witnesses who were deposed in this time frame. That was because "design work" was part of the "trade secret" claim which was finally dismissed by ASI after it proved to be unsupported.


4. If it is determined that ASI and/or ASI's counsel is sanctionable, the Sage Defendants should recover at least \$57,115.80 in attorney fees that were incurred in defending against the trade secret claim.

DATED this <sup>th</sup>20 day of February, 2015.

  
GARY L. COOPER

SUBSCRIBED AND SWORN to before me this <sup>th</sup>20 day of February, 2015



  
NOTARY PUBLIC FOR IDAHO  
Residing at Pocatello  
My commission expires: 5-26-17

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702

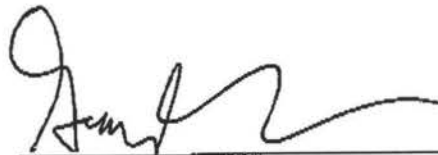
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GARY L. COOPER



1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

3 NO. \_\_\_\_\_

FILED

A.M. \_\_\_\_\_

P.M. 4:48

4 FEB 23 2015

5 CHRISTOPHER D. RICH, Clerk  
6 By JANET ELLIS  
DEPUTY

7 AMERICAN SEMICONDUCTOR, INC.,  
8 an Idaho Corporation,

9 Plaintiff,

10 vs.

11 SAGE SILICON SOLUTIONS, LLC, an  
12 Idaho corporation; ZILOG, INC., a  
13 Delaware corporation; DAVID ROBERTS;  
14 GYLE YEARSLEY; WILLIAM TIFFANY,

15 Defendants

Case No. CV-OC-11-23344

16 SAGE SILICON SOLUTIONS, LLC, an  
17 Idaho limited liability company; DAVID  
18 ROBERTS, GYLE YEARSLEY,  
19 WILLIAM TIFFANY, individuals,

20 Counterclaimants,

MEMORANDUM DECISION AND ORDER  
RE: ATTORNEY FEES AND COSTS

21 vs.

22 AMERICAN SEMICONDUCTOR, INC.,  
23 an Idaho Corporation,

24 Counterdefendant.

25 APPEARANCES:

26 John N. Zarian & Kennedy K. Luvai (Parsons Behle & Latimer), for Plaintiff  
Gary L. Cooper & J.D. Oborn (Cooper & Larsen, Pocatello), for Defendants Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany  
Gerald T. Husch, Andrea J. Rosholt, & Stephen R. Thomas (Moffatt Thomas Barrett Rock &  
Fields, Chtd.), for Defendant Zilog, Inc.

1 This matter came before the Court for oral argument on February 19, 2015, regarding American  
2 Semiconductor, Inc.'s Motion for Costs and Fees against the Sage Defendants, filed February 4, 2015;  
3 the Sage Defendant's Memorandum in Support of Award of Costs and Attorney Fees, filed February 4,  
4 2015; and Zilog, Inc.'s Motion For Attorney Fees and Costs, filed February 4, 2015.

### 5 **FACTUAL AND PROCEDURAL BACKGROUND**

6 This action brought by American Semiconductor, Inc. ("ASI") arises from ASI's employment of  
7 three engineers: Defendants Roberts, Yearsley, and Tiffany. As a condition of accepting employment  
8 with ASI, Roberts, Yearsley, and Tiffany signed written Employee Confidentiality Agreements  
9 ("ECAs") prohibiting them from competing with ASI during their employment. After becoming ASI  
10 employees, the foregoing "Individual Defendants," along with Russell Lloyd and Evelyn Perryman,  
11 formed a limited liability company, Defendant Sage Silicon Solutions, LLC ("Sage") through which they  
12 contracted with Zilog, Inc. ("Zilog") to provide design engineering services.

14 ASI filed its Second Amended Complaint and Demand for Jury Trial on July 2, 2013, against a)  
15 Sage; b) Zilog, and c) defendants Roberts, Yearsley, and Tiffany as well as Russell Lloyd and Evelyn  
16 Perryman. In the Second Amended Complaint, ASI asserted eleven causes of action against one or more  
17 of the defendants. Essentially, ASI claimed that the Individual Defendants Roberts, Yearsley, and  
18 Tiffany, while employed by ASI, formed their own company (Sage) and, as employees of Sage, used  
19 ASI's trade secrets and other proprietary confidential information in providing services to Zilog pursuant  
20 to an Independent Contractor Services Agreement between Sage and Zilog, in violation of Roberts,  
21 Yearsley, and Tiffany's ECAs with ASI.

23 The jury trial in this case commenced on January 5, 2015, and the jury returned a Special Verdict  
24 on Friday, January 16, 2015. Judgment was entered in this case on January 21, 2015. Each party in this  
25 matter now moves the Court for an award of attorney fees and costs.  
26

## DISCUSSION

### I. American Semiconductor, Inc. v. Zilog, Inc.

#### Prevailing Party Analysis

Zilog argues that it is the prevailing party in this matter as between ASI and Zilog. Idaho Rule of Civil Procedure 54(d)(1)(B) provides that “[i]n determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties.”

With regard to which party, if any, prevailed in an action, “the prevailing party question is examined and determined from an overall view....” *Oakes v. Boise Heart Clinic Physicians, PLLC*, 152 Idaho 540, 545, 272 P.3d 512, 517 (2012); *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 719, 117 P.3d 130, 133 (2005). ASI’s Second Amended Complaint, filed July 2, 2013, alleged six causes of action against Zilog, including: Tortious Interference with Prospective Economic Advantage, Tortious Interference with Contract, Idaho Trade Secrets Act Violation, Unjust Enrichment, Declaratory Relief, and Injunctive Relief.

When the instant matter was submitted to the jury for deliberation, ASI was pursuing one cause of action against Zilog, Tortious Interference with Contract. The jury found in Special Verdict Question 6 that Zilog did not “intentionally interfere with American Semiconductor, Inc.’s contracts with the individual Sage defendants.” Thus, Zilog was found not liable to ASI on any claim in any amount. “In litigation, avoiding liability is as good for a defendant as winning a money judgment is for a plaintiff.” *Eighteen Mile Ranch, LLC*, 141 Idaho at 719, 117 P.3d at 133. ASI’s allegation of tortious interference with contract against Zilog was a significant cause of action which the jury rejected. Reviewing ASI’s claims against Zilog from an overall view, the Court, in an exercise of discretion, finds that as between Plaintiff ASI and Defendant Zilog, Zilog is the prevailing party in this matter.

1 **Zilog, Inc.'s Costs**

2 Having determined that Zilog prevailed against ASI, the Court turns to the issue of costs. As the  
3 prevailing party, Zilog is entitled to certain costs as a matter of right. I.R.C.P. 54(d)(1)(A). In its  
4 Memorandum of Fees and Costs, Zilog claims \$19,929.72 in costs as a matter of right pursuant to  
5 I.R.C.P. 54(d)(1)(C).

6 Court Filing Fees (I.R.C.P. 54(d)(1)(C)1)

7 The total amount of court filing fees requested by Zilog is \$66.00. The Court awards 100% of  
8 such amount, or \$66.00.

9 Travel Expenses of Witnesses (I.R.C.P. 54(d)(1)(C)4)

10 The total amount of witness travel expenses requested by Zilog as a matter of right is \$251.43.  
11 The Court awards 100% of such amount, or \$251.43.

12 Costs of exhibits admitted into evidence (I.R.C.P. 54(d)(1)(C)6)

13 Zilog claims reasonable costs of trial exhibits as a matter of right in the amount of \$500. The  
14 Court awards 100% of such amount, or \$500.

15 Expert Witness Fees (I.R.C.P. 54(d)(1)(C)8)

16 Zilog requests expert witness fees in the amount of \$2,000 each for Monte Dalrymple, Charles  
17 Donohoe, and Dennis Reinstein. I.R.C.P. 54(d)(1)(C)8 allows for \$2,000 in costs as a matter of right for  
18 an expert witness "who testifies at a deposition or at a trial of an action." The record reflects that only  
19 Dennis Reinstein testified at the trial in this matter, and Zilog does not allege that Monte Dalrymple or  
20 Charles Donohoe testified at a deposition in this matter. The Court will therefore award expert witness  
21 fees as a matter of right only for Dennis Reinstein, in the amount of \$2,000.

22 Charges for Reporting and Transcribing of a Deposition (I.R.C.P. 54(d)(1)(C)9)

1 Zilog claims charges for reporting and transcribing depositions as a matter of right in the amount  
2 of \$1,816.15. The Court awards 100% of such amount, or \$1,816.15.

3 Charges for One Copy of Any Deposition (I.R.C.P. 54(d)(1)(C)10)

4 Zilog claims charges for one copy of any deposition in this action as a matter of right in the  
5 amount of \$11,296.14. The Court awards 100% of such amount, or \$11,296.14.

6 In sum, the Court will award the costs requested by Zilog as a matter of right in the amount of  
7 \$15,929.72.

8 Discretionary Costs

9  
10 In its Memorandum of Fees and Costs, Zilog claims \$62,469.50 in discretionary costs pursuant to  
11 I.R.C.P. 54(d)(1)(D). I.R.C.P. 54(d)(1)(D) allows the trial court to award discretionary costs “upon a  
12 showing that said costs were necessary and exceptional costs reasonably incurred, and should in the  
13 interest of justice be assessed against the adverse party.”

14 Zilog first requests \$8,874.69 in costs related to “Westlaw Online Research.” In its review of the  
15 billing statements related to Westlaw Online research, the Court finds research relating to ASI’s trade  
16 secret claims in the amount of \$2,839.67. ASI ultimately withdrew its trade secrets claims, and the  
17 Court finds that Zilog’s research costs relating to such claims were necessary and exceptional costs  
18 reasonably incurred, and should in the interest of justice be assessed against ASI. Accordingly, the  
19 Court, in a careful exercise of discretion, finds that Zilog is entitled to an award of its Westlaw Online  
20 Research expenses related to ASI’s trade secrets claims in the amount of \$2,839.67.

21  
22 Zilog next requests \$2,041.90 in “Mileage/Travel Reimbursement” costs incurred by Zilog  
23 employees and its attorneys in attending depositions. The Court does not find that Zilog has made a  
24 showing that travel reimbursement is the kind of “necessary and exceptional” cost which should be  
25  
26

1 assessed against ASI in the interest of justice. Accordingly, the Court, in a careful exercise of discretion,  
2 will not award Zilog discretionary costs relating to "Mileage/Travel Reimbursement."

3 Zilog also requests \$47,728.24 in "Expert Fees in Excess of \$2,000" relating to Monte  
4 Dalrymple, Charles Donohoe, and Dennis Reinstein. As noted above, the record reflects that only  
5 Dennis Reinstein testified at the trial in this matter, and Zilog does not allege that Monte Dalrymple or  
6 Charles Donohoe testified at a deposition in this matter. Accordingly, the Court does not find that costs  
7 relating to Monte Dalrymple or Charles Donohoe were necessary and exceptional. However, the Court  
8 is of the view that issues of lost profits and damages were crucial and essential aspects of this case.  
9 Therefore, the Court finds that a significant portion of the costs incurred by Zilog in retaining Dennis  
10 Reinstein are sufficiently necessary and exceptional and should in the interest of justice be assessed  
11 pursuant to Rule 54(d)(1)(D). Accordingly, in a careful exercise of discretion, the Court assesses  
12 discretionary expert witness fees to Zilog for Dennis Reinstein, in the amount of \$20,000.  
13

14 Zilog further requests \$933 in discretionary costs relating to its "Mediation Fee." The Court does  
15 not find that costs relating to mandatory mediation are sufficiently "necessary and exceptional" to be  
16 awarded as discretionary costs. In a careful exercise of discretion, the Court declines to award any  
17 discretionary costs relating to Zilog's "Mediation Fee."  
18

19 Zilog next requests \$52 in discretionary costs relating to "Trial Exhibits in Excess of \$500."  
20 Given the degree of detail and the nature of the trial in this matter, the Court does find that exhibits  
21 prepared for and used at trial are sufficiently necessary and exceptional and should in the interest of  
22 justice be assessed as discretionary costs. Therefore, the Court, in an exercise of discretion, awards  
23 Zilog \$52 in discretionary costs relating to "Trial Exhibits in Excess of \$500."  
24

25 Zilog finally requests \$2,839.67 in discretionary costs related to "Other Necessary and  
26 Exceptional Expenses," comprised mostly of transcripts for various hearings in this case. The Court



1 does not find that hearing transcripts are necessary and exceptional. However, Zilog requests transcript  
2 costs for the hearing on July 18, 2014, when this Court heard Zilog's Motion for Sanctions regarding  
3 ASI's failure to disclose the basis of its trade secrets claims. The Court finds such cost in those  
4 circumstances was necessary and exceptional such that the transcript cost for that hearing should be  
5 assessed against ASI in the interest of justice. Accordingly, the Court, in a careful exercise of its  
6 discretion, awards Zilog \$230.05 in discretionary costs for the July 18, 2014 hearing transcript.

7 In a careful exercise of discretion, the Court assesses a portion of the discretionary costs  
8 requested by Zilog in the total amount of \$23,121.72.  
9

10 **Zilog, Inc.'s Attorney's Fees**

11 Zilog moves the Court for an award of reasonable attorney's fees against ASI and/or its counsel  
12 of record, the law firm of Parsons Behle & Latimer, pursuant to Idaho Rules of Civil Procedure 54(e)(1),  
13 41(a)(2), 37(b), 11(a)(1), Idaho Rule of Professional Conduct 3.4(f), and Idaho Code Sections 12-120(3)  
14 and 12-121. As Idaho Code § 12-120(3) provides the broadest recovery of attorney's fees for Zilog, the  
15 Court will begin its analysis there.

16 **I.C. § 12-120(3).**

17 Idaho Code Section 12-120(3) provides:  
18

19 In any civil action to recover on an open account, account stated, note, bill, negotiable  
20 instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or  
21 services and in any commercial transaction unless otherwise provided by law, the prevailing  
22 party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected  
23 as costs.

24 The term "commercial transaction" is defined to mean all transactions except transactions for  
25 personal or household purposes. The term "party" is defined to mean any person, partnership,  
26 corporation, association, private organization, the state of Idaho or political subdivision thereof.

Zilog argues that this case is based on a contract, a commercial transaction, or both. With regard to the  
contract basis of I.C. § 12-120(3), the Idaho Supreme Court recently provided "when a plaintiff alleges a

1 commercial contract exists and the defendant successfully defends by showing that the commercial  
2 contract never existed, the court awards the defendant attorney fees.” *Intermountain Real Properties,*  
3 *LLC v. Draw, LLC*, 155 Idaho 313, 320, 311 P.3d 734, 741 (2013). Thus, in order to trigger the contract  
4 basis of I.C. § 12-120(3), the record must reflect an allegation that a contract existed. *Id.* The record in  
5 this case does not reflect that a contract between ASI and Zilog was ever alleged. Accordingly, this  
6 Court does not find that Zilog is entitled to an award of attorney fees based on the contract provision of  
7 I.C. § 12-120(3).

8  
9 In determining whether attorney fees should be awarded under the commercial transaction  
10 provision of I.C. § 12–120(3), the Idaho Supreme Court conducts a two-step analysis: 1) there must be a  
11 commercial transaction which is integral to the claim; and 2) the commercial transaction must be the  
12 basis upon which recovery is sought. *Garner v. Povey*, 151 Idaho 462, 469, 259 P.3d 608, 615 (2011).  
13 The “commercial transaction” must form an actual basis of the complaint such that the lawsuit and the  
14 causes of action are based on a commercial transaction, and it may not simply be a situation which can  
15 merely be characterized as a commercial transaction. *Id.* In the words of the Idaho Supreme Court, “the  
16 relevant inquiry is whether the commercial transaction constituted ‘the gravamen of the lawsuit,’ and  
17 was the basis on which a party is attempting to recover.” *Id.* “Thus, I.C. § 12–120(3) is triggered when  
18 there are ‘allegations in the complaint that the parties entered into a commercial transaction and that the  
19 complaining party is entitled to recover based upon that transaction.’” *Intermountain Real Properties,*  
20 *LLC v. Draw, LLC*, 155 Idaho 313, 320, 311 P.3d 734, 741 (2013), quoting *Garner v. Povey*, 151 Idaho  
21 462, 470, 259 P.3d 608, 616 (2011). The Idaho Supreme Court also has held that the “action must arise  
22 from a commercial transaction between the parties.” *Syringa Networks, LLC v. Idaho Dep’t of Admin.*,  
23 155 Idaho 55, 66, 305 P.3d 499, 510 (2013), *reh’g denied* (Aug. 29, 2013), quoting *BECO Constr. Co.,*  
24 *Inc. v. J–U–B Eng’rs, Inc.*, 145 Idaho 719, 726, 184 P.3d 844, 851 (2008). The record in this case does  
25  
26



1 not reflect that a commercial transaction between ASI and Zilog was ever alleged. Accordingly, this  
2 Court does not find that Zilog is entitled to an award of attorney's fees based on I.C. § 12-120(3).

3 Zilog points to ASI's prior contractual customer relationship with Zilog as forming the basis of  
4 the commercial transaction in this case. The record indicates that the previous commercial interaction  
5 between ASI and Zilog was in 2003, while Zilog's conduct which formed the basis of ASI's complaint  
6 in this matter was during the 2009-2011 timeframe. Accordingly, the record does not reflect that a  
7 commercial transaction between ASI and Zilog formed the basis of ASI's Complaint in this matter.  
8 Therefore, this Court finds that Zilog is not entitled to an award of attorney fees based on a commercial  
9 transaction as provided in I.C. § 12-120(3).  
10

11 Idaho Code § 12-121.

12 Zilog also requests attorney fees pursuant to Idaho Code Section 12-121, which provides in  
13 pertinent part: "[i]n any civil action, the judge may award reasonable attorney's fees to the prevailing  
14 party or parties...." However, "attorney fees under section 12-121, Idaho Code, may be awarded by the  
15 court only when it finds, from the facts presented to it, that the case was brought, pursued or defended  
16 frivolously, unreasonably or without foundation...." I.R.C.P. 54(e)(1). "The terms 'brought' and  
17 'pursued,' used disjunctively in Rule 54(e)(1), signify that a nonprevailing litigant may suffer an award  
18 of fees if a claim which is arguably meritorious when initially asserted is rendered frivolous,  
19 unreasonable or without foundation by subsequent events or information during the pendency of the  
20 suit." *Ortiz v. Reamy*, 115 Idaho 1099, 1101, 772 P.2d 737, 739 (Ct. App. 1989). Any "fee award in  
21 such circumstances would encompass only the fees reasonably incurred by the prevailing party after the  
22 claim had ceased to be arguably meritorious." *Id.* Moreover, as articulated by the Idaho Supreme Court,  
23 "[a]ppportionment of attorney fees is appropriate for those elements of the case that were frivolous,  
24  
25  
26

1 unreasonable, and without foundation.” *Idaho Military Historical Soc’y, Inc. v. Maslen*, 156 Idaho 624,  
2 632, 329 P.3d 1072, 1080 (2014), *reh’g denied* (Aug. 6, 2014).

3 The record in this case indicates that Zilog filed a Motion to Compel regarding the basis of ASI’s  
4 trade secret claims on April 18, 2014. At the hearing on such motion on May 2, 2014, the Court granted  
5 the motion and ruled that ASI was, by May 23, 2014, to describe with reasonable specificity each and  
6 every trade secret or trade secrets owned by ASI which were the subject matter of this action. After ASI  
7 failed to disclose such information by May 23, 2014, Zilog filed a Motion for Sanctions on July 3, 2014.  
8 At the hearing on such motion on July 18, 2014, the Court ruled that ASI was then in violation of the  
9 Court’s discovery order. However, the Court gave ASI until August 4, 2014, to supplement its response  
10 to Zilog’s Interrogatory No. 3 by describing with reasonable specificity each and every trade secret  
11 owned by ASI which were the subject matter of this action. In so doing, the Court warned ASI of the  
12 consequences of failing to disclose the basis of its trade secrets claims by the August 4, 2014 deadline.  
13 ASI again failed to comply with the Court’s Order by supplementing its response to Zilog’s Interrogatory  
14 No. 3. Rather, on August 19, 2014, ASI moved the Court for voluntary dismissal of its claims for Idaho  
15 Trade Secret Act Violations as well as other claims. At a hearing on several motions from all parties on  
16 September 26, 2014, the Court granted ASI’s Motion for Voluntary Dismissal of its trade secret claims,  
17 reserving a determination of an award of attorney fees, if any, until all other issues in this case had been  
18 resolved.  
19  
20

21 As evidenced by ASI’s Motion for Voluntary Dismissal of its trade secret claims, at some point  
22 during the course of this litigation ASI became aware that its trade secret claims were unsupported.  
23 Zilog served its First Set of Discovery Requests to Plaintiff on September 23, 2013. Thus, in the Court’s  
24 view, ASI had approximately seven months from service of Zilog’s First Set of Discovery Requests to  
25 identify the basis of its trade secret claims before this Court ruled that ASI must disclose the bases of  
26

1 such claims by May 23, 2014. ASI's failure to identify with reasonable specificity the nature of its trade  
2 secret claims by May 23, 2014 indicates to the Court that ASI was aware that such claims were  
3 unfounded at that time. However, ASI chose to further pursue its trade secret claims until August 19,  
4 2014 when it moved the Court for voluntary dismissal of those claims. Additionally, Zilog was required  
5 to defend against ASI's trade secret claims until the Court granted ASI's Motion for Voluntary Dismissal  
6 on September 26, 2014.

7 Based on the foregoing, and in a careful exercise of its discretion, the Court finds that ASI  
8 pursued its trade secret claims without foundation from May 23, 2014 through August 19, 2014. As  
9 previously stated, Zilog was required to defend against ASI's trade secret claims until this Court granted  
10 ASI's Motion for Voluntary Dismissal. Accordingly, upon review of billing records applicable to  
11 Zilog's defense against ASI's trade secret claims from May 23, 2014 through September 26, 2014, the  
12 Court awards Zilog reasonable costs and attorney fees relating to such defense in the amount of \$90,497.  
13 In arriving at such figure, the Court has carefully considered many factors including, but not limited to,  
14 those factors specified in I.R.C.P. 54(e)(3). In its review of the billing statements, the Court allowed  
15 recovery of attorney fees related solely to Zilog's defense against trade secret claims at the rate of \$250  
16 per hour for partners, \$200 per hour for associates, and \$75 per hour for paralegals.  
17

18 I.R.C.P. 37(b).  
19

20 Zilog also moves this Court for an Order awarding its reasonable expenses and attorney fees as  
21 sanctions pursuant to Idaho Rule of Civil Procedure 37(b). Rule 37(b)(2) allows for several  
22 discretionary sanctions against a party that fails to comply with a discovery order. "The imposition of  
23 sanctions under I.R.C.P. 37(b) 'is committed to the discretion of the trial court, and that ruling will not  
24 be overturned on appeal absent a manifest abuse of discretion.'" *State Ins. Fund v. Jarolimek*, 139 Idaho  
25 137, 138, 75 P.3d 191, 192 (2003).  
26

1 Rule 37(b)(2) also provides for mandatory sanctions: "In lieu of any of the foregoing orders or  
2 in addition thereto, the court shall require the party failing to obey the order or the attorney advising the  
3 party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the  
4 court finds that the failure was substantially justified or that other circumstances make an award of  
5 expenses unjust."

6 As discussed above, the record in this case demonstrates that ASI failed to comply with two of  
7 this Court's discovery orders. With a jury trial set for early December, 2014, ASI did not, by May 23,  
8 2014, describe with reasonable specificity each and every trade secret or trade secrets owned by ASI  
9 which were the subject matter of this action, and ASI also failed to supplement, by August 4, 2014, its  
10 response to Zilog's Interrogatory No. 3, which requested that ASI describe with reasonable specificity  
11 each and every trade secret or trade secrets owned by ASI which were the subject matter of this action.  
12 Thus, the Court finds it is clear that ASI did not comply with two of the Court's discovery orders  
13 regarding ASI's claims that Zilog misappropriated its trade secrets. The Court does not find ASI's lack  
14 of compliance with discovery orders to be substantially justified. Therefore, in a careful exercise of the  
15 Court's discretion pursuant to Idaho Rule of Civil Procedure 37(b)(2), this Court shall require ASI,  
16 and/or its attorney of record, John N. Zarian and the law firm of Parsons Behle & Latimer, to pay Zilog's  
17 reasonable expenses, including attorney fees, caused by ASI's failure to comply with the Court's  
18 discovery orders regarding trade secret claims, in the amount of \$90,497 (inclusive of the amount  
19 awarded pursuant to I.C. § 12-121).

20  
21  
22 I.R.C.P. 11(a).

23 Additionally, Zilog moves this Court for an award of reasonable expenses and attorney fees  
24 against ASI and its counsel as sanctions pursuant to Idaho Rule of Civil Procedure 11(a)(1). Rule  
25 11(a)(1) provides in part:  
26

1 The signature of an attorney or party constitutes a certificate that the attorney or party has read  
2 the pleading, motion or other paper; that to the best of the signer's knowledge, information, and  
3 belief after reasonable inquiry it is well grounded in fact and is warranted by existing law or a  
4 good faith argument for the extension, modification, or reversal of existing law, and that it is  
5 not interposed for any improper purpose, such as to harass or to cause unnecessary delay or  
6 needless increase in the cost of litigation....If a pleading, motion or other paper is signed in  
7 violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the  
8 person who signed it, a represented party, or both, an appropriate sanction, which may include an  
9 order to pay to the other party or parties the amount of the reasonable expenses incurred because  
10 of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

11 Rule 11 thus authorizes the imposition of sanctions, including attorney fees, upon an attorney who signs  
12 a pleading, motion, or other paper which violates the requirements of the Rule. *Flying A Ranch, Inc. v.*  
13 *Bd. of Cnty. Comm'rs for Fremont Cnty.*, 156 Idaho 449, 456, 328 P.3d 429, 436 (2014).

14 As discussed in greater detail above, the Court found that ASI pursued its trade secret claims  
15 without foundation from May 23, 2014 through August 19, 2014. Thus, any pleading, motion, or other  
16 paper signed by ASI's counsel from May 23, 2014 through August 19, 2014, advancing prosecution of  
17 ASI's trade secrets claims, asserted that to the best of ASI's counsel's knowledge, information, and  
18 belief after reasonable inquiry, such claims were well grounded in fact. However, Zilog does not appear  
19 to allege, and the Court does not find, that ASI's counsel signed any pleading, motion, or other paper  
20 during the timeframe relevant to the Court's inquiry which directly asserted or advanced prosecution of a  
21 claim based on a violation of the Idaho Trade Secrets Act. Accordingly, without Counsel having directly  
22 advanced pleadings relating to ASI's trade secrets claims from May 23, 2014, through August 19, 2014,  
23 this Court does not find that Rule 11(a)(1) sanctions are warranted in this case.

#### 24 The Sage Defendants.

25 The Sage Defendants joined in all of Zilog's arguments related to the award of reasonable  
26 attorney fees and costs from ASI pursuant to I.R.C.P. 37, I.R.C.P. 11, and Idaho Code § 12-121. For the  
foregoing reasons, the Court finds the Sage Defendants are also entitled, based on I.C. § 12-121 and

1 I.R.C.P. 37, to reasonable attorney fees and costs relating to the defense against ASI's trade secrets  
2 claims from May 23, 2014 through September 26, 2014. Accordingly, upon review of billing records  
3 applicable to the Sage Defendant's defense against ASI's trade secret claims from May 23, 2014 through  
4 September 26, 2014, the Court, in a careful exercise of discretion, awards the Sage Defendants  
5 reasonable attorney fees and costs relating to such defense in the aggregate amount of \$6,000. In  
6 arriving at such figure, the Court has carefully considered many factors including, but not limited to,  
7 those factors specified in I.R.C.P. 54(e)(3). In its review of the billing statements, the Court allowed  
8 recovery of attorney fees related solely to the Sage Defendants' defense against trade secret claims at the  
9 rate of \$250 per hour for partners, \$200 per hour for associates, and \$75 per hour for paralegals.  
10

11 I.R.C.P 41(a)(2).

12 Zilog also moves the Court for an award of its reasonable expenses and attorney fees against ASI  
13 pursuant to Idaho Rule of Civil Procedure 41(a)(2). Rule 41(a)(2) provides in pertinent part: "Except  
14 as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the  
15 plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems  
16 proper." Zilog argues that ASI should not be permitted to avoid liability for costs and attorney fees by  
17 filing a motion for voluntary dismissal of its trade secret claims more than two and one-half years after it  
18 asserted those claims in its Second Amended Complaint filed July 2, 2013. The Court agrees in part,  
19 and as noted above, believes that Zilog is entitled to reasonable expenses and attorney fees incurred in  
20 defense of ASI's trade secrets claims from May 23, 2014 through September 26, 2014. The Court  
21 awards Zilog \$90,497 (inclusive of the amounts awarded pursuant to I.C. § 12-121 and I.R.C.P. 37(b))  
22 for reasonable costs and fees incurred defending against ASI's trade secret claims during that timeframe.  
23

24 Sanctions for Pattern or Practice of Misconduct.  
25  
26



1 Zilog additionally moves this Court for an award of Zilog's reasonable expenses, including  
2 attorney fees as sanctions against ASI's counsel for a pattern or practice of misconduct in this case.  
3 Specifically, Zilog alleges that John Zarian, counsel for ASI: 1) violated Idaho Rule of Professional  
4 Conduct 3.4(f) by requesting that former Defendant Evelyn Perryman not cooperate with Sage or Zilog;  
5 2) overtly sought to bias the jury against Zilog by depicting ASI as a family business and Zilog as a huge  
6 corporation; and 3) attempted to bring clearly inadmissible evidence of jurors' statements before the  
7 Court for an improper purpose.

8 Regarding Zilog's request for sanctions against ASI's counsel pursuant to Rule of Professional  
9 Conduct 3.4(f), the Court does not find that such conduct warrants the imposition of monetary sanctions.  
10 The same is true regarding Zilog's request for sanctions against ASI's counsel for overtly seeking to bias  
11 the jury. The record in this case reflects that Mr. Zarian was informed, in the presence of the jury when  
12 necessary, when the Court viewed such conduct as improper. Thus, further sanctions for such conduct  
13 are unnecessary. Finally, regarding Zilog's request for sanctions against ASI's counsel for attempting to  
14 bring inadmissible jurors' statements before the Court for an improper purpose, the record reflects that at  
15 the conference on January 30, 2015, the Court invited counsel for ASI, if he had an appropriate purpose  
16 consistent with I.R.E. 606(b) for doing so, to submit a motion specifying why counsel sought to contact  
17 the jury. Although this Court did not agree with ASI that it had a proper purpose in thereafter bringing  
18 its motion, the Court does not find that monetary sanctions for such conduct are warranted in this  
19 instance.  
20  
21

## 22 **II. American Semiconductor, Inc. v. Sage Silicon Solutions, LLC and the Individual Defendants**

### 23 **Prevailing Party Analysis**

24 Both ASI and the Sage Defendants claim to have prevailed over one another in this matter. Idaho  
25 Rule of Civil Procedure 54(d)(1)(B) provides:  
26

1 In determining which party to an action is a prevailing party and entitled to costs, the trial court  
2 shall in its sound discretion consider the final judgment or result of the action in relation to the  
relief sought by the respective parties.

3 “In determining which party prevailed where there are claims and counterclaims between opposing  
4 parties, the court determines who prevailed ‘in the action’; that is, the prevailing party question is  
5 examined and determined from an overall view, not a claim-by-claim analysis.” *Oakes v. Boise Heart*  
6 *Clinic Physicians, PLLC*, 152 Idaho 540, 545, 272 P.3d 512, 517 (2012). Moreover, “there are three  
7 principal factors a trial court must consider when determining which party, if any, prevailed: (1) the final  
8 judgment or result obtained in relation to the relief sought; (2) whether there were multiple claims or  
9 issues between the parties; and (3) the extent to which each of the parties prevailed on each of the claims  
10 or issues.” *Nguyen v. Bui*, 146 Idaho 187, 192, 191 P.3d 1107, 1112 (Ct. App. 2008).

12 ASI’s Second Amended Complaint, filed July 2, 2013, alleged eleven causes of action against the  
13 Sage Defendants, including: Breach of Contract, Breach of Fiduciary Duty/Duty of Loyalty, Breach of  
14 Implied Covenant of Good Faith and Fair Dealing, Tortious Interference with Prospective Economic  
15 Advantage, Tortious Interference with Contract, Idaho Trade Secrets Act Violation, Improper  
16 Appropriation of American Semiconductor’s Name, Unjust Enrichment, Consumer Protection Act  
17 Violation, Declaratory Relief, and Injunctive Relief. ASI also asserted a claim for punitive damages by  
18 subsequent motion. For their part, the Sage Defendants initially asserted four counterclaims against ASI,  
19 including: Fraud/Fraud in the Inducement, Tortious Interference with Contract, *Quantum Meruit*, and  
20 Unjust Enrichment.

22 At the time this matter was submitted to the jury for deliberation, ASI sought \$1,025,087 in  
23 damages on three causes of action against the Sage Defendants including: Breach of Contract, Breach of  
24 Fiduciary Duty of Loyalty, and Tortious Interference with a Prospective Economic Advantage. The jury  
25 found that the individual Sage Defendants did “breach paragraph 7 (Duty Not to compete) of the  
26



1 Employee Confidentiality Agreement,” and also found that the individual Sage Defendants did “breach a  
2 fiduciary duty of loyalty to American Semiconductor, Inc.” However, the jury did not award ASI  
3 damages on either of those causes of action. The jury found that the Sage Defendants did “intentionally  
4 interfere with American Semiconductor, Inc.’s economic expectancy of contracting with Zilog, Inc.,”  
5 and awarded \$195,175 in damages on that claim.

6 The Sage Defendants, acting as counterclaimants, submitted two counterclaims, Tortious  
7 Interference with Contract and Unjust Enrichment, to the jury for deliberation, seeking \$76,975.25 in  
8 damages. The jury found that ASI did “intentionally interfere with Sage Silicon Solutions, LLC’s  
9 contract with Zilog, Inc.,” but did not award damages on that counterclaim. Lastly, the jury found that  
10 ASI was not “unjustly enriched from its use of Sage Silicon Solutions, LLC’s 16-bit timer.”  
11

12 As stated above, “the prevailing party question is examined and determined from an overall  
13 view, not a claim-by-claim analysis.” *Oakes v. Boise Heart Clinic Physicians, PLLC*, 152 Idaho 540,  
14 545, 272 P.3d 512, 517 (2012). “In litigation, avoiding liability is as good for a defendant as winning a  
15 money judgment is for a plaintiff.” *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141  
16 Idaho 716, 719, 117 P.3d 130, 133 (2005). Moreover, a plaintiff’s recovery of a money judgment at  
17 trial, by itself, does not dictate that the plaintiff is the prevailing party when the defendant substantially  
18 reduces its ultimate liability at trial. *See Adams v. Krueger*, 124 Idaho 74, 77, 856 P.2d 864, 867 (1993);  
19 *see also Costa v. Borges*, 145 Idaho 353, 359, 179 P.3d 316, 322 (2008) (“A trial court also has  
20 discretion to determine that there is no overall prevailing party”).  
21

22 Out of twelve causes of action which ASI pursued against the Sage Defendants, only three  
23 claims were submitted to the jury. ASI recovered damages on one of its three claims against the Sage  
24 Defendants, and recovered 19% of the total damages it sought. Because ASI succeeded on only one of  
25 its three claims against the Sage Defendants, recovering only 19% of its claimed damages, the Court, in  
26

1 a thoroughly considered decision and in a careful exercise of its discretion, finds there is no prevailing  
2 party in this matter as between ASI and the Sage Defendants.

3 **Costs**

4 ASI and the Sage Defendants both seek costs and expenses in this case pursuant to Idaho Rule of  
5 Civil Procedure 54(d)(1) and the Employee Confidentiality Agreements (“ECAs”) between ASI and the  
6 Sage Defendants. Idaho Rule of Civil Procedure 54(d)(1)(A) provides: “Except when otherwise  
7 limited by these rules, costs shall be allowed as a matter of right to the prevailing party or parties, unless  
8 otherwise ordered by the court.” Because the court finds no prevailing party in this case as between ASI  
9 and the Sage Defendants, neither ASI nor the Sage Defendants are entitled to costs as a matter of right.  
10

11 Section 6(c) of the ECAs provides: “The prevailing party in any action to enforce this  
12 Agreement shall be reimbursed or paid by the other party for its reasonable attorney’s fees and all costs  
13 incurred in connection with such enforcement.” Similarly, Section 13 of the ECAs provides: “for all  
14 matters and actions arising under this Agreement[, t]he prevailing party shall be entitled to reasonable  
15 attorney’s fees and costs incurred in connection with such litigation.” Based on the plain language in  
16 Sections 6(c) and 13 of the ECAs, only “the prevailing party” is entitled to costs. This Court has found  
17 there is no prevailing party in this matter as between ASI and the Sage Defendants. Accordingly, neither  
18 ASI nor the Sage Defendants are entitled to costs or expenses in this case pursuant to the terms of the  
19 Employee Confidentiality Agreements.  
20

21 **Attorney Fees**

22 ASI and the Sage Defendants each seek reasonable attorney fees in this case pursuant to Idaho  
23 Rule of Civil Procedure 54(e)(1), Idaho Code Section 12-120(3), and the Employee Confidentiality  
24 Agreements between ASI and the Sage Defendants.  
25  
26

1 I.R.C.P. 54(e)(1) provides that “[i]n any civil action the court may award reasonable attorney  
2 fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as  
3 defined in Rule 54(d)(1)(B), when provided for by any statute or contract.” The Court found there was  
4 no prevailing party in this matter as between ASI and the Sage Defendants. Thus, this Court does not  
5 find a basis for awarding either ASI or the Sage Defendants attorney fees based on I.R.C.P. 54(e)(1).

6 Both ASI and the Sage Defendants seek attorney fees in this case pursuant to Idaho Code Section  
7 12-120(3) which provides:

8 In any civil action to recover on an open account, account stated, note, bill, negotiable  
9 instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or  
10 services and in any commercial transaction unless otherwise provided by law, the prevailing  
11 party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected  
12 as costs.

13 The term “commercial transaction” is defined to mean all transactions except transactions for  
14 personal or household purposes. The term “party” is defined to mean any person, partnership,  
15 corporation, association, private organization, the state of Idaho or political subdivision thereof.

16 Based on the plain language of such statute, only “the prevailing party” is entitled to reasonable attorney  
17 fees. As this Court found no prevailing party in this matter between ASI and the Sage Defendants, it  
18 does not find a basis for awarding ASI or the Sage Defendants attorney fees based on Idaho Code  
19 Section 12-120(3).

20 Finally, both ASI and the Sage Defendants seek attorney fees in this case pursuant to the  
21 Employee Confidentiality Agreements (“ECAs”) between ASI and the Sage Defendants. As previously  
22 stated, Section 6(c) of the ECAs provides: “The prevailing party in any action to enforce this  
23 Agreement shall be reimbursed or paid by the other party for its reasonable attorney’s fees and all costs  
24 incurred in connection with such enforcement.” Moreover, Section 13 of the ECAs provides: “for all  
25 matters and actions arising under this Agreement[, t]he prevailing party shall be entitled to reasonable  
26 attorney’s fees and costs incurred in connection with such litigation.” Based on the plain language of

1 Sections 6(c) and 13 of the ECAs, only "the prevailing party" is entitled to attorney fees. This Court has  
2 found there was no prevailing party in this matter as between ASI and the Sage Defendants.

3 Accordingly, neither ASI nor the Sage Defendants are entitled to attorney fees in this case pursuant to  
4 the terms of the Employee Confidentiality Agreements.

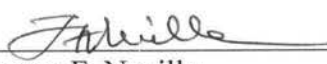
### 5 CONCLUSION

6 For the foregoing reasons, Zilog, Inc.'s request for costs and fees is GRANTED IN PART and  
7 DENIED IN PART. In addition, American Semiconductor, Inc.'s Motion to Disallow Zilog, Inc.'s  
8 Requests for Costs and Fees, is GRANTED IN PART and DENIED IN PART. In a careful exercise of  
9 this Court's discretion, Zilog, Inc. is awarded costs as a matter of right in the amount of \$15,929.72,  
10 discretionary costs in the amount of \$23,121.72, and attorney fees, pursuant to Idaho Code § 12-121,  
11 I.R.C.P. 37(b), and I.R.C.P. 41(a)(2), in the amount of \$90,497.00.

12 As between American Semiconductor, Inc. and the Sage Defendants, the Sage Defendants'  
13 request for costs and fees is GRANTED IN PART and DENIED IN PART. Plaintiff American  
14 Semiconductor, Inc.'s Motion for Costs and Fees Against the Sage Defendants is DENIED. In a careful  
15 exercise of this Court's discretion, neither American Semiconductor, Inc., nor the Sage Defendants, is  
16 awarded costs as a matter of right or discretionary costs. The Sage Defendants are awarded attorney fees  
17 pursuant to Idaho Code § 12-121 and I.R.C.P. 37(b) in the amount of \$6,000.  
18

19 Counsel for Zilog, Inc. shall submit a form of order and/or amended judgment necessary to  
20 implement this decision. AND IT IS SO ORDERED.  
21

22 Dated this 23<sup>rd</sup> day of February, 2015.

23   
24 Thomas F. Neville  
25 District Judge  
26

CERTIFICATE OF MAILING

I hereby certify that on this 23<sup>rd</sup> day of February 2015, I mailed (served) a true and correct copy of the within instrument to:

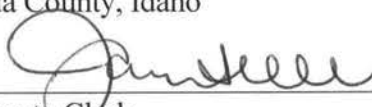
John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
800 W. Main Street, Suite 1300  
Boise, ID 83702  
Fax No. (208) 562-4901

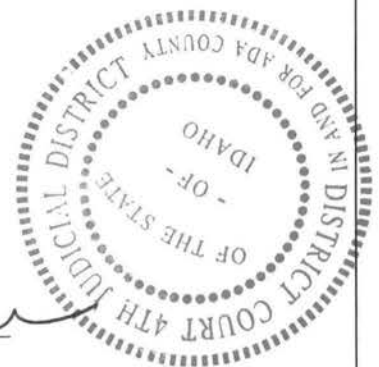
Gary L. Cooper  
J.D. Oborn  
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Gerald T. Husch  
Andrea J. Rosholt  
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Fax No. (208) 385-5384

CHRISTOPHER D. RICH  
Clerk of the District Court  
Ada County, Idaho

  
Deputy Clerk



FEB 24 2015

CHRISTOPHER D. RICH, Clerk  
By JANET ELLIS  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**AMENDED JUDGMENT**

AMENDED JUDGMENT IS ENTERED AS FOLLOWS:

1. Plaintiff American Semiconductor, Inc. shall recover the amount of  
\$195,175.00 on its claim for tortious interference with prospective economic expectancy against

AMENDED JUDGMENT - 1

Client:3769331.3

002135

defendants David Roberts, Gyle Yearsley, William Tiffany and Sage Silicon Solutions, LLC,  
plus post-judgment interest at the rate of 5.125% per annum;

2. Plaintiff American Semiconductor, Inc. shall recover nothing on its claims  
against defendant Zilog, Inc.;

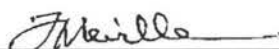
3. Counterclaimants David Roberts, Gyle Yearsley, William Tiffany and  
Sage Silicon Solutions, LLC shall recover nothing on their claims against counterdefendant  
American Semiconductor, Inc.;

4. Defendant Zilog, Inc. shall recover **\$39,051.44**, as costs, against plaintiff  
American Semiconductor, Inc., plus post-judgment interest at the rate of 5.125% per annum;

5. Defendant Zilog, Inc. shall recover the amount of **\$90,497.00**, as attorney  
fees, against plaintiff American Semiconductor, Inc., and/or its attorney of record, John N.  
Zarian and the law firm of Parsons Behle & Latimer, plus post-judgment interest at the rate of  
5.125% per annum; and

6. Defendants David Roberts, Gyle Yearsley, William Tiffany and Sage  
Silicon Solutions, LLC shall recover **\$6,000.00**, as attorney fees, against plaintiff American  
Semiconductor, Inc. and/or its attorney of record, John N. Zarian and the law firm of Parsons  
Behle & Latimer, plus post-judgment interest at the rate of 5.125% per annum.

DATED this 25<sup>th</sup> day of February, 2015.

  
\_\_\_\_\_  
The Honorable Thomas F. Neville  
District Judge



### CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of February, 2015, I caused a true and correct copy of the foregoing **AMENDED JUDGMENT** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
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Facsimile (208) 345-4461  
*Attorneys for Counterclaimants Sage Silicon Solutions, LLC; David Roberts; Gyle Yearsley; and William Tiffany*

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*Attorney for Defendant Zilog, Inc.*

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*Attorneys for Plaintiff and Counterdefendant American Semiconductor, Inc.*

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Deputy Clerk





ORIGINAL

John N. Zarian, ISB No. 7390  
Kennedy K. Luvai, ISB No. 8824  
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SArnett@parsonsbehle.com

*Attorneys for Plaintiff/Appellant  
American Semiconductor, Inc.*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff/Appellant,

vs.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho corporation; ZILOG, INC., a  
Delaware corporation; DAVID ROBERTS;  
GYLE YEARSLEY; WILLIAM TIFFANY; and  
Defendants DOES 1-X,

Defendants/Respondents

RELATED COUNTER ACTIONS

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 443

FEB 27 2015

CHRISTOPHER D. RICH, Clerk  
By TENILLE RAD  
DEPUTY

Case No.: CV OC 1123344

**NOTICE OF APPEAL**

Fee Category: L.4  
Fee Amount: \$129.00

TO: THE ABOVE NAMED RESPONDENTS: Zilog, Inc.; Sage Silicon Solutions, LLC; David Roberts, Gyle Yearsley; and William Tiffany; and to their attorneys:

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Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.  
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Facsimile: (208) 345-4461  
*Attorneys for Counterclaimants/Respondents Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany*

AND TO THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, American Semiconductor, Inc. ("American Semiconductor"), appeals against the above-named respondents to the Idaho Supreme Court from the Judgment, entered in the above-entitled action on the 21st day of January, 2015, after a jury trial, as amended by the Amended Judgment, entered in the above-entitled action on the 25th day of February, 2015, as well as any and all orders that relate to the preliminary statement of issues set forth in paragraph 3 below, Honorable Thomas J. Neville presiding.

2. American Semiconductor has a right to appeal to the Idaho Supreme Court, and the judgments described in paragraph 1 above are appealable under Rule 11(a)(1) I.A.R.

3. American Semiconductor provides the following preliminary statement on issues on appeal, which American Semiconductor intends to assert in this appeal. However, pursuant to Rule 17(f) I.A.R., this preliminary statement shall not prevent American Semiconductor from asserting other issues on appeal.

(a) Whether the District Court erred in denying American Semiconductor's motion to compel respondent Zilog, Inc.'s ("Zilog") production of licensing agreements and related documents entered into between Zilog and/or its parent company, on the one hand, and third parties, on the other, and related to the use or availability of certain requisite software and/or design tools, based in part upon apparent misstatements about their use.

(b) Whether the District Court erred in allowing Zilog to produce and present untimely evidence relating to requisite software and/or design tools, to the prejudice of American Semiconductor.

(c) Whether the District Court erred in denying American Semiconductor's motion *in limine* seeking to preclude introduction of evidence or presentation of related argument in connection with undisclosed licensing agreements and information relating to software and/or design tools.

(d) Whether the District Court erred in denying American Semiconductor's motion *in limine* seeking to preclude introduction of evidence or presentation of related argument in connection with untimely disclosed opinions from respondents' jointly retained damages expert.

(e) Whether the District Court erred in making findings and rulings concerning the relevance of undisclosed licensing agreements and/or availability of software and/or design tools based upon an *in camera* review of an undisclosed licensing agreement, without any review or input from American Semiconductor or its counsel and based in part on apparent misstatements about the undisclosed licensing agreement.

(f) Whether the District Court erred in precluding American Semiconductor from examining witnesses or presenting evidence based on the limited information revealed to American Semiconductor, including certain facts about the license agreement reviewed by the District Court *in camera*.

(g) Whether the District Court erred in admitting evidence and permitting related argument concerning the availability and/or costs of software and/or design tools while, at the same time, effectively precluding American Semiconductor from examining witnesses and presenting any rebuttal evidence regarding the same issues at trial.

(h) Whether the District Court erred in admitting a draft settlement agreement and permitting related argument as a means of allowing respondents Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany (the "Sage Respondents") to attempt to show bias on the part of a principal of American Semiconductor towards one or more of them.

(i) Whether the District Court erred in granting a motion for a directed verdict at trial dismissing American Semiconductor's claim against Zilog for tortious interference with American Semiconductor's prospective economic advantage in the form of its employment relationships with its then-employees.

(j) Whether the District Court erred, as part of jury instruction no. 28, in instructing the jury concerning multiple recoveries for the same injury.

(k) Whether the District Court erred in denying American Semiconductor's motion for leave to contact jurors, and enjoining any such contact, for limited purposes such as clarifying the jury verdict entered on January 16, 2015.

(l) Whether the District Court erred in denying American Semiconductor's motion to amend or clarify the verdict, or in the alternative, to amend the judgment entered on January 21, 2015.

(m) Whether the District Court erred in denying American Semiconductor's motion to continue a February 19, 2015, hearing on the parties' motions for attorneys' fees and costs, and in proceeding with the hearing without allowing for briefing on the issues as provided for under Rules 54 and 7 of the Idaho Rules of Civil Procedure.

(n) Whether the District Court erred in finding that American Semiconductor was not the prevailing party with regard to the claims asserted against, and the counterclaims asserted by, the Sage Respondents.

(o) Whether the District Court erred in finding that American Semiconductor pursued its trade secret misappropriation claim without foundation, within the meaning of Idaho Code section 12-121, between May 23, 2014 and August 19, 2014.

(p) Whether the District Court erred in finding that American Semiconductor had violated two discovery orders entered on June 18, 2014 and August 27, 2014 respectively, and that American Semiconductor and/or its law firm of record were thus subject to sanctions under Rule 37(b)(2) of the Idaho Rules of Civil Procedure.

(q) Whether the District Court erred in finding that Zilog was entitled to reasonable expenses and attorney fees pursuant to Rule 41(a)(2) of the Idaho Rules of Civil Procedure as a term or condition for its previous grant of American Semiconductor's motion for voluntary dismissal of the claim for misappropriation of trade secret, without prejudice, on September 26, 2014.

(r) Whether the District Court erred in determining the amounts of reasonable costs and fees awarded to the Sage Respondents against American Semiconductor.

(s) Whether the District Court erred in determining the amounts of reasonable costs and fees awarded to Zilog against American Semiconductor.

4. A Protective Order was entered by the District Court on January 29, 2013. A number of documents revealing and/or discussing information designated by one or more of the parties as confidential pursuant to the Protective Order were thereafter filed under seal. However, no order was entered by the District Court sealing all or any portion of the record.

5. Reporter's Transcript

(a) A reporter's transcript is requested as designated in paragraph (b) below.

(b) American Semiconductor requests preparation of the following portions of the reporter's transcript in electronic format:

Date	Nature of Description of Proceeding
January 11, 2013	Motion Hearing
January 10, 2014	Motion Hearing
May 2, 2014	Motion Hearing
July 18, 2014	Motion Hearing
September 26, 2014	Motion Hearing
November 14, 2014	Motion Hearing
December 9, 2014	Motion Hearing

<b>Date</b>	<b>Nature of Description of Proceeding</b>
January 6, 2015	Testimony of Doug Hackler
January 6, 2015	Conferences outside the presence of the jury
January 7, 2015	Testimony of Doug Hackler
January 7, 2015	Testimony of Lorelli Hackler
January 7, 2015	Testimony of Richard Chaney
January 7, 2015	Conferences outside the presence of the jury
January 8, 2015	Testimony of Richard Chaney
January 8, 2015	Testimony of Dale Wilson
January 8, 2015	Conferences outside the presence of the jury
January 9, 2015	Testimony of Russell Lloyd
January 9, 2015	Testimony of Evelyn Perryman
January 9, 2015	Testimony of Stephen Darraugh
January 9, 2015	Conferences outside the presence of the jury
January 10, 2015	Testimony of David Roberts
January 10, 2015	Testimony of William Tiffany
January 10, 2015	Testimony of Gyle Yearsley
January 10, 2015	Conferences outside the presence of the jury
January 12, 2015	Testimony of Richard Hoffman
January 12, 2015	Testimony of Dennis Reinstein
January 10, 2015	Conferences outside the presence of the jury
January 13, 2015	Testimony of David Staab
January 13, 2015	Conferences outside the presence of the jury
January 14, 2015	Conferences outside the presence of the jury
January 15, 2015	Closing arguments
January 15, 2015	Conferences outside the presence of the jury
January 16, 2015	Verdict hearing
January 16, 2015	Conferences outside the presence of the jury
January 30, 2015	Post-verdict conference
February 19, 2015	Motion hearing



6. American Semiconductor, Inc. requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R:

<b>Date of Filing</b>	<b>Nature or Description of Filing</b>
March 26, 2012	Motion to Compel
March 26, 2012	Affidavit of Stephen Adams
May 16, 2012	Affidavit of Stephen Darraugh
May 17, 2012	Affidavit of David Roberts
May 22, 2012	Reply in Support of Motion to Compel
June 12, 2012	Order Re: Motion to Compel
January 29, 2013	Protective Order
February 11, 2013	Motion to Enforce the Court's January 11, 2013 Order
February 11, 2013	Declaration of John N Zarian in Support of Plaintiff's Motion to Enforce the Court's January 11, 2013 Order
February 11, 2013	Memorandum in Support of Plaintiff's Motion to Enforce the Court's January 11, 2013 Order
May 31, 2013	Plaintiff American Semiconductor, Inc.'s Motion to Compel
May 31, 2013	Memorandum in Support of Plaintiff American Semiconductor, Inc.'s Motion to Compel
May 31, 2013	Declaration of John N. Zarian in Support of Plaintiff American Semiconductor, Inc.'s Motion to Compel
August 30, 2013	Plaintiff American Semiconductor, Inc.'s Motion to Compel against Defendant Zilog, Inc.
August 30, 2013	Memorandum in Support of Plaintiff American Semiconductor, Inc.'s Motion to Compel against Defendant Zilog, Inc.
August 30, 2013	Declaration of John N. Zarian in Support of Plaintiff American Semiconductor, Inc.'s Motion to Compel against Defendant Zilog, Inc.
October 11, 2013	Defendant Zilog, Inc.'s Motion to Vacate and Reset October 18, 2013 Hearing on Plaintiff's Motion to Compel
October 11, 2013	Affidavit of Gerald T. Husch



<b>Date of Filing</b>	<b>Nature or Description of Filing</b>
October 11, 2013	Defendant Zilog, Inc.'s Memorandum in Opposition to Plaintiff American Semiconductor, Inc.'s Motion to Compel
October 15, 2013	American Semiconductor, Inc.'s Opposition to Motion to Vacate and Reset Hearing on Motion to Compel
October 16, 2013	Memorandum Decision and Order Granting Defenant Zilog's Motion to Vacate and Reset Hearing
December 27, 2013	Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel against Defendant Zilog, Inc.
December 27, 2013	Declaration of Kennedy K. Luvai in Support of Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel against Defendant Zilog, Inc.
December 27, 2013	Memorandum in Support of Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel against Defendant Zilog, Inc.
January 3, 2014	Defendant Zilog's Memorandum in Opposition to Plaintiff American Semiconductor, Inc.'s Motion to Compel against Defendant Zilog, Inc.
January 3, 2014	Declaration of Ramon Lopez in Opposition to American Semiconductor, Inc.'s Motion to Compel against Defendant Zilog, Inc.
January 3, 2014	Declaration of Dan Eaton in Opposition to American Semiconductor, Inc.'s Motion to Compel against Defendant Zilog, Inc.
January 8, 2014	Reply in Further Support of Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel against Defendant Zilog, Inc
April 18, 2014	Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition
April 18, 2014	Memorandum in Support of Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition
April 18, 2014	Declaration of Kennedy K. Luvai in Support of Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition

<b>Date of Filing</b>	<b>Nature or Description of Filing</b>
April 18, 2014	Zilog, Inc.'s Motion to Compel
April 18, 2014	Memorandum in Support of Zilog, Inc.'s Motion to Compel
April 18, 2014	Declaration of Stephen R. Thomas Zilog, Inc.'s Motion to Compel
April 28, 2014	Memorandum in Opposition to Motion to Compel
April 28, 2014	Declaration of Cheryl Dunham
April 28, 2014	Declaration of David R. Staab
April 28, 2014	Declaration of Dan Eaton in Opposition to Motion to Compel
April 28, 2014	American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion to Compel
April 28, 2014	Declaration of Doug Hackler in Support of American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion to Compel
April 28, 2014	Declaration of Kennedy K. Luvai in Support of American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion to Compel
April 30, 2014	Reply in Further Support of Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition
April 30, 2014	Supplemental Declaration of Kennedy K. Luvai in Support of Plaintiff's Motions to Compel: (1) Production of Documents by Zilog; and (2) Resumption of Zilog's Rule 30(b)(6) Deposition
May 14, 2014	Order Granting Stipulation re: Case Management Deadlines
June 18, 2014	Order Re: Plaintiff's Motions to Compel Production of Documents by Zilog and (2) Resumption of Zilog's Rule 30(b)(6) deposition
June 18, 2014	Order Re: Zilog's Motion to Compel
July 3, 2014	Zilog, Inc.'s Motion for Sanctions
July 3, 2014	Declaration in Support of Zilog, Inc.'s Motion for Sanctions

<b>Date of Filing</b>	<b>Nature or Description of Filing</b>
July 3, 2014	Memorandum in Support of Zilog, Inc.'s Motion for Sanctions
July 14, 2014	Plaintiff American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion for Sanctions
July 14, 2014	Declaration of Kennedy K. Luvai in Support of Plaintiff American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion for Sanctions
July 16, 2014	Reply in Support of Zilog, Inc.'s Motion for Sanctions
August 19, 2014	American Semiconductor, Inc.'s Motion for Voluntary Dismissal of its Claims for Misappropriation of Trade Secret, Improper Appropriation of Name, Consumer Protection Act and Injunctive Relief
August 27, 2014	Order on Zilog's Motion for Sanctions
August 27, 2014	Notice of Errata Re: American Semiconductor, Inc.'s Motion for Voluntary Dismissal of its Claims for Misappropriation of Trade Secret, Improper Appropriation of Name, Consumer Protection Act and Injunctive Relief
August 28, 2014	Notice of Zilog, Inc.'s Objection to American Semiconductor, Inc.'s (Proposed) Order Granting American Semiconductor, Inc.'s Motion for Voluntary Dismissal of its Claims for Misappropriation of Trade Secret, Improper Appropriation of Name, Consumer Protection Act and Injunctive Relief
August 29, 2014	Defendant Zilog, Inc.'s Motion for Summary Judgment
August 29, 2014	Memorandum in Support of Defendant Zilog, Inc.'s Motion for Summary Judgment
August 29, 2014	Declaration of Gerald Husch in Support of Defendant Zilog, Inc.'s Motion for Summary Judgment
September 12, 2014	American Semiconductor, Inc.'s Opposition to Zilog, Inc.'s Motion for Summary Judgment
September 12, 2014	Second Affidavit of Sarah H. Arnett in Support of Oppositions to Motion for Summary Judgment
September 19, 2014	Reply Memorandum in Support of Zilog, Inc.'s Motion for Summary Judgment

<b>Date of Filing</b>	<b>Nature or Description of Filing</b>
October 31, 2014	Zilog's Motions in Limine Re: (1) Misappropriation of ASI's confidential information and (2) ASI's Alleged Prospective Economic Expectancy with Zilog
October 31, 2014	Memorandum in Support of Zilog's Motions in Limine Re: (1) Misappropriation of ASI's confidential information and (2) ASI's Alleged Prospective Economic Expectancy with Zilog
October 31, 2014	Declaration of Gerald T. Husch Re: Zilog's Pretrial Motions
October 31, 2014	Plaintiff's Motion in Limine No. 11: Undisclosed Licenses
October 31, 2014	Memorandum in Support of Plaintiff's Motion in Limine No. 11: Undisclosed Licenses
October 31, 2014	Declaration of Kennedy Luvai in Support of Plaintiff's Motions in Limine
November 7, 2014	Sage Defendants' Opposition to ASI's Motion in Limine No. 11
November 7, 2014	Zilog, Inc.'s Opposition to ASI's Motion in Limine No. 11 Re: Undisclosed Licenses
November 7, 2014	Declaration of Gerald T. Husch in Opposition to Plaintiff's Motion in Limine No. 11 Re: Undisclosed Licenses
November 7, 2014	Declaration of David R. Staab in Opposition to Plaintiff's Motion in Limine No. 11 Re: Undisclosed Licenses
November 7, 2014	American Semiconductor, Inc.'s Opposition to Zilog's Motions in Limine Re: (1) Misappropriation of ASI's confidential information and (2) ASI's Alleged Prospective Economic Expectancy with Zilog
November 7, 2014	Declaration of Kennedy K. Luvai in Support of ASI's Oppositions to Defendants' Pretrial Motions
November 12, 2014	Supplemental Declaration of Kennedy Luvai in Support of Motions in Limine
November 12, 2014	Reply in Further Support of Plaintiff's Motion in Limine No. 11 Re: Zilog's Undisclosed Licenses

Date of Filing	Nature or Description of Filing
November 12, 2014	Notice of Errata Re: Declaration of Kennedy K. Luvai in Support of ASI's Oppositions to Defendants' Pretrial Motions
November 13, 2014	Order Granting American Semiconductor, Inc.'s Motion for Voluntary Dismissal of Certain Claims
November 13, 2014	Order Denying in Part and Granting in Part Zilog, Inc.'s Motion for Summary Judgment
November 26, 2014	Plaintiff's Motion in Limine No. 13 to Preclude Jointly Retained Defense Expert Dennis Reinstein's Untimely Disclosed Expert Opinions
November 26, 2014	Memorandum in Support of Plaintiff's Motion in Limine No. 13 to Preclude Jointly Retained Defense Expert Dennis Reinstein's Untimely Disclosed Expert Opinions
November 26, 2014	Third Supplemental Declaration of Kennedy K. Luvai in Support of Plaintiff's Motions in Limine
December 3, 2014	Zilog, Inc.'s Opposition to Plaintiff's Motion in Limine No. 13 to Preclude Jointly Retained Defense Expert Dennis Reinstein's Untimely Disclosed Expert Opinions
December 3, 2014	Declaration of Dennis Reinstein, CPA/ABV, ASA, CVA, in Opposition to Plaintiff's Motion in Limine No. 13 to Preclude Jointly Retained Defense Expert Dennis Reinstein's Untimely Disclosed Expert Opinions
December 3, 2014	Declaration of Gerald T. Husch in Opposition to Plaintiff's Motion in Limine No. 13 to Preclude Jointly Retained Defense Expert Dennis Reinstein's Untimely Disclosed Expert Opinions
December 5, 2014	Fourth Declaration of Kennedy Luvai in Support of Motions in Limine
December 5, 2014	Reply in Further Support of Motion in Limine No. 13 to Preclude Jointly Retained Defense Expert
December 5, 2014	Affidavit in Support of Motion in Limine No. 13 to Preclude Jointly Retained Defense Expert
December 23, 2014	Supplemental Memorandum in Support of Motion in Limine No. 11
December 23, 2014	Declaration of Kennedy Luvai in Support of Memorandum

<b>Date of Filing</b>	<b>Nature or Description of Filing</b>
January 2, 2015	Zilog, Inc.'s Trial Brief
January 16, 2015	Jury Instructions
January 16, 2015	Verdict Form
February 4, 2015	Sage Defendants' Memorandum in Support of Award of Costs and Attorney Fees
February 4, 2015	Affidavit of Gary L Cooper in Support of Costs and Attorney Fees
February 4, 2015	Plaintiff's Motion to Amend or Clarify the Verdict, or in the Alternative, Amend the Judgment
February 4, 2015	Plaintiff's Motion for Leave to Contact Jurors
February 4, 2015	American Semiconductor, Inc.'s Motion for Costs and Fees against the Sage Defendants
February 4, 2015	Memorandum in Support of American Semiconductor, Inc.'s Motion for Costs and Fees against the Sage Defendants
February 4, 2015	Affidavit of John N. Zarian in Support of American Semiconductor, Inc.'s Motion for Costs and Fees against the Sage Defendants
February 4, 2015	American Semiconductor, Inc.'s Memorandum of Costs and Fees
February 4, 2015	Zilog, Inc.'s Memorandum of Costs and Fees
February 4, 2015	Memorandum in Support of Zilog, Inc.'s Motion for Attorney Fees and Costs
February 4, 2015	Declaration of Gerald T. Husch in Support of Zilog, Inc.'s Motion for Attorney Fees and Costs
February 5, 2015	Joinder with Zilog, Inc.'s Motion for Attorney Fees and Costs
February 9, 2015	American Semiconductor, Inc.'s Request for Clarification of Deadline to Object to Motions for Fees and Costs (and Request for Telephonic Conference)
February 12, 2015	American Semiconductor, Inc.'s Motion to Continue Hearing on Motions for Fees and Costs
February 12, 2015	Memorandum in Support of American Semiconductor, Inc.'s Motion to Continue Hearing on Motions for Fees and Costs



<b>Date of Filing</b>	<b>Nature or Description of Filing</b>
February 13, 2015	Sage Defendants' Motion to Disallow ASI's Request for Costs and Attorney Fees
February 13, 2015	Sage Defendants' Memorandum in Opposition to ASI's Request for Costs and Attorney Fees
February 13, 2015	Sage Defendants' Memorandum in Opposition to ASI's Motion for Leave to Contact Jurors
February 13, 2015	Sage Defendants' Memorandum in Opposition to ASI's Motion to Continue Hearing
February 17, 2015	Plaintiff's Reply in Support of its Motion to Amend or Clarify the Verdict, or in the Alternative, Amend the Judgment
February 17, 2015	Reply in Further Support of American Semiconductor, Inc.'s Motion to Continue Hearing on Motions for Fees and Costs Pursuant to Rules 54 and 7
February 17, 2015	Reply in Support of Motion for Leave to Contact Jurors
February 17, 2015	Affidavit of John N Zarian in Support of Plaintiff's Reply in Support of its Motion for Leave to Contact Jurors
February 18, 2015	American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs
February 18, 2015	Declaration of Doug Hackler in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs
February 18, 2015	Declaration of Dale Wilson in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs
February 18, 2015	Declaration of Stephen D. Holland in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs
February 18, 2015	Declaration of John N. Zarian in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs
February 18, 2015	Declaration of Kennedy K. Luvai in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Motion for Fees and Costs

<b>Date of Filing</b>	<b>Nature or Description of Filing</b>
February 18, 2015	Memorandum No. 1 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs Re: Rule 11
February 18, 2015	Memorandum No. 2 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs Re: Rule 37
February 18, 2015	Memorandum No. 3 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs Re: Rule 41
February 18, 2015	Memorandum No. 4 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs Re: I.C. 12-121
February 18, 2015	Memorandum No. 5 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs Re: I.C. 12-120(3)
February 18, 2015	Memorandum No. 6 in Support of American Semiconductor, Inc.'s Objection and Motion to Disallow Zilog, Inc.'s Request for Fees and Costs Re: Court's Inherent Authority to Sanction
February 19, 2015	Notice of Intent to Oppose the Sage Defendants' Motion to Disallow American Semiconductor, Inc.'s Request for Costs and Attorney Fees
February 20, 2015	American Semiconductor, Inc.'s Motion to Disallow Costs in Opposition to Sage Defendants' Memorandum in Support of an Award of Costs and Attorney Fees
February 20, 2015	Combined Memorandum in Support of: (1) American Semiconductor, Inc.'s Motion to Disallow Costs; and (2) American Semiconductor, Inc.'s Opposition to the Sage Defendants' Motion to Disallow Costs
February 20, 2015	Affidavit of Gary L. Cooper in Support of Sanctions against ASI



7. American Semiconductor, Inc. requests the following documents, charts, or pictures offered or admitted as exhibits at trial to be copied and sent to the Supreme Court:

<b>Exhibit No.</b>	<b>Nature or Description of Exhibit</b>
101	Document Entitled, "Est of Zilog Quote Prepared by ASI for Req for Prod No. 12,"
110	Tools Analysis, Bates No. ASI 003553
119	Schedule 1 from Richard Hoffman report
120	Schedule 2 from Richard Hoffman report
121	Schedule 3 from Richard Hoffman report
122	Schedule 4 from Richard Hoffman report
123	Schedule 5 from Richard Hoffman report
127	Schedule 2 from Richard Hoffman rebuttal report
1-VVVV	Combined, Exhibit to Reinstein Supplemental Report, 11-24-2014
1-OOOO	Schedule 1 – Summary, Exhibit to Reinstein Supplemental Report, 11-24-2014
1-AAAA	Perryman Settlement Offer, Exhibit 323 to Wilson Depo 6-25 & 26-2014

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Susan Wolf  
Official Court Reporter, Ada County Courthouse  
200 West Front Street  
Boise, ID 83702


Vanessa Gosney  
Official Court Reporter, Ada County Courthouse  
200 West Front Street  
Boise, ID 83702

Christie Valcich  
Official Court Reporter, Ada County Courthouse  
13333 N. 5<sup>th</sup> Ave.  
Boise, ID 83714

- (b) That the clerk of the district court has been paid the estimated fee for the preparation of the reporter's transcript.
- (c) That the deposit for preparation of the clerk's record has been paid.
- (d) That the appellate filing fee has been paid.
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 27th day of February, 2015.

PARSONS BEHLE & LATIMER

By  \_\_\_\_\_

John N. Zarian  
Kennedy K. Luva  
Sarah H. Arnett

*Attorneys for Plaintiff and Counterdefendant  
AMERICAN SEMICONDUCTOR, INC.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of February, 2015, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Gary L. Cooper  
COOPER & LARSEN CHARTERED  
151 North Third Avenue, 2nd Floor  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Telephone: (208) 235-1145  
Facsimile: (208) 235-1182  
*Attorneys for Defendants/Respondents Sage Silicon  
Solutions, LLC, David Roberts, Gyle Yearsley and  
William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
Email: gary@cooper-larsen.com  
barbie@cooper-larsen.com

Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
12550 W. Explorer Drive, Suite 100  
Boise, ID 83713  
Telephone: (208) 345-3333  
Facsimile: (208) 345-4461  
*Attorneys for Counterclaimants/Respondents Sage  
Silicon Solutions, LLC, David Roberts, Gyle Yearsley  
and William Tiffany*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
Email: dbower@stm-law.com  
chad@stm-law.com  
suzie@stm-law.com

Stephen R. Thomas  
Gerald T. Husch  
MOFFATT THOMAS BARRETT ROCK  
& FIELDS, CHTD.  
P.O. Box 829  
Boise, ID 83701-0829  
Telephone: (208) 345-2000  
Facsimile: (208) 385-5384  
*Attorneys for Defendant/Respondent Zilog, Inc.*

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
Email: srt@moffatt.com  
gth@moffatt.com



Kennedy Luvai

Appeals

M&R-13-2015 10:07

PER-LARSEN

208 235 1182

P.002/005

ORIGINAL

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 2:42

MAR 13 2015

CHRISTOPHER D. RICH, Clerk  
By KATRINA HOLDEN  
DEPUTY

Gary L. Cooper - Idaho State Bar #1814  
COOPER & LARSEN, CHARTERED  
151 North Third Avenue, Second Floor  
P.O. Box 4229

Pocatello, ID 83205-4229

Telephone: (208) 235-1145

Facsimile: (208) 235-1182

Email: [gary@cooper-larsen.com](mailto:gary@cooper-larsen.com)

*Counsel for Defendants Sage Silicon Solutions, LLC, David Roberts,  
Gyle Yearsley, William Tiffany and Evelyn Perryman*

Daniel W. Bower - Idaho State Bar #7204  
STEWART TAYLOR & MORRIS, PLLC  
12559 W. Explorer Drive, Suite 100  
Boise, ID 83713

Telephone: (208) 345-3333

Facsimile: (208) 345-4461

Email: [dbower@stm-law.com](mailto:dbower@stm-law.com)

*Counsel for Counterclaimants*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiff/Appellant,

vs.

SAGE SILICON SOLUTIONS, LLC., an  
Idaho Corporation; ZILOG, INC., a  
Delaware Corporation; DAVID ROBERTS,  
GYLE YEARSLEY, WILLIAM TIFFANY  
and Defendants DOES I - X,

Defendants/Respondents.

CASE NO. CV-OC-1123344

REQUEST FOR  
ADDITIONAL RECORD

RELATED COUNTER ACTIONS

REQUEST FOR ADDITIONAL RECORD - PAGE 1

002157

**TO: THE ABOVE NAMED APPELLANT AND THE PARTYS' ATTORNEYS AND TO  
THE CLERK OF THE ABOVE ENTITLED COURT:**

**NOTICE IS HEREBY GIVEN** that the Respondents, Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany, in the above entitled proceeding hereby request pursuant to Rule 19, I.A.R., the inclusion of the following material in the clerk's record in addition to that required to be included by the I.A.R. and the notice of appeal:

**1. Clerk's Record:**

06-27-12	Defendant's Motion for Protective Order
06-27-12	Objection to Motion for Protective Order and Submission of Proposed Protective Order
07-14-14	Opposition of Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany to Plaintiff's Motion to Amend to Add Prayer for Punitive Damages
08-29-14	Motion for Summary Judgment by Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany
08-29-14	Memorandum in Support of Motion for Summary Judgment by Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany
08-29-14	American Semiconductors, Inc.'s Motion for Summary Judgment Re: Defendants Roberts, Yearsley and Tiffany's Counterclaims
08-29-14	Memorandum in Support of American Semiconductors, Inc.'s Motion for Summary Judgment Re: Defendants Roberts, Yearsley and Tiffany's Counterclaims
09-12-14	Memorandum Opposing ASI's Motion for Partial Summary Judgment Re: Claims Against Roberts, Yearsley, Tiffany and Sage Silicon Solutions
09-12-14	Memorandum in Opposition to Motion for Summary Judgment
09-19-14	Reply Memorandum in Support of Motion for Summary Judgment by Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley and William Tiffany
10-14-14	Motion in Limine to Preclude ASI from Raising the Issue of Failure to Assign Inventions

**REQUEST FOR ADDITIONAL RECORD - PAGE 2**

10-22-14 Motion in Limine to Preclude ASI from Raising the Issue of Improper Use or Misappropriation of Confidential Information by Roberts, Yearsley and Tiffany

10-24-14 Motion to Reconsider

10-24-14 Memorandum in Support of Motion for Reconsideration

10-28-14 Motion in Limine to Exclude Expert Report and Testimony of Richard Hoffman Regarding Lost Profits

10-28-14 Memorandum in Support of Motion in Limine of Hoffman's Expert Opinions

11-13-14 Order Granting in Part and Denying in Part Sage Defendants' Motion for Summary Judgment Against American Semiconductor, Inc.

11-13-14 Order Denying Plaintiff's Motion for Summary Judgment Re: Defendants Roberts, Yearsley and Tiffany's Counterclaims

12-05-14 Notice of Election of Remedies

12-12-14 Notice of Service

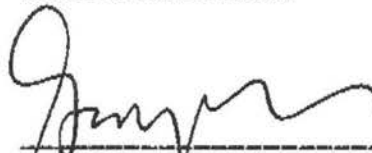
**2. Exhibits:**

Exhibit No.	Description
4	Employee Confidentiality Agreement Re: David A. Roberts, Bates Nos. ASI 33 to 36
13	Employee Confidentiality Agreement Re: Gyle Yearsley, No Bates Numbers
14	Employee Confidentiality Agreement Re: William Tiffany, Bates Nos. ASI 56 to 59
82	E-Mail from Dale Wilson to David Roberts, 12/9/09, Re: Employment Discussion Plan, Bates No. 2033
89	ASI Employee Manual, 2010, Bates Nos. ASI 1824 to 1848

3. I certify that a copy of this request was served upon the clerk of the district court and upon all parties required to be served pursuant to Rule 20.

DATED this 13<sup>th</sup> day of March, 2015.

COOPER & LARSEN

  
GARY L. COOPER

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of March, 2015, I served a true and correct copy of the foregoing to:

John N. Zarian  
Kennedy K. Luvai  
Parsons Behle & Latimer  
800 W Main Street, Suite 1300  
Boise, ID 83702

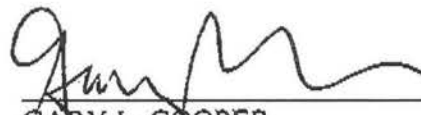
☒ U.S. mail  
☐ Express mail  
☐ Hand delivery  
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[kluvai@parsonsBehle.com](mailto:kluvai@parsonsBehle.com)  
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☒ Fax: 208-385-5384

  
GARY L. COOPER

Boise/Torist  
MAR 3/16/15

NO. \_\_\_\_\_ FILED \_\_\_\_\_ 422  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

MAR 13 2015

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

Stephen R. Thomas, ISB No. 2326  
Gerald T. Husch, ISB No. 2548  
Andrea J. Rosholt, ISB No. 8895  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
101 S. Capitol Blvd., 10th Floor  
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Telephone (208) 345-2000  
Facsimile (208) 385-5384  
srt@moffatt.com  
gth@moffatt.com  
ajr@moffatt.com  
25332.0000

Attorneys for Defendant/Respondent Zilog, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Plaintiff/Appellant,

v.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho Corporation; ZILOG, INC., a Delaware  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY, WILLIAM TIFFANY, and  
Defendants DOES I-X,

Defendants/Respondents.

SAGE SILICON SOLUTIONS, LLC, an  
Idaho limited liability company; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, individuals

Counterclaimants,

v.

AMERICAN SEMICONDUCTOR, INC., an  
Idaho Corporation,

Counterdefendant.

Case No. CV OC 1123344

**ZILOG, INC.'S REQUEST FOR  
ADDITIONAL TRANSCRIPT AND  
RECORD ON APPEAL**



**TO: THE ABOVE-NAMED APPELLANT, AMERICAN SEMICONDUCTOR, INC.; ITS ATTORNEYS, JOHN N. ZARIAN, KENNEDY K. LUVAI, SARAH H. ARNETT, AND THE LAW FIRM OF PARSONS BEHLE & LATIMER; AND THE COURT REPORTER AND CLERK OF THE ABOVE-ENTITLED COURT:**

NOTICE IS HEREBY GIVEN that Defendant/Respondent Zilog, Inc. ("Zilog"), requests, pursuant to Rule 19 of the Idaho Appellate Rules (the "IAR"), inclusion of the following materials in the reporter's transcript (in electronic format) and the clerk's record on appeal, in addition to that required to be included by the IAR and the Notice of Appeal filed February 27, 2015, by Plaintiff/Appellant American Semiconductor, Inc. ("ASI"):

1. Reporter's Transcript: In addition to the reporter's transcript requested by ASI in its Notice of Appeal, Zilog hereby requests that reporter's transcript on appeal include:

- Transcripts of the following hearings before the Honorable District Judge Thomas F. Neville:
  - September 6, 2013 Motion to Compel Hearing; and
  - December 23, 2014 Pretrial Conference Hearing.
- Any and all conferences held outside the presence of the jury between January 1, 2015 (Trial Day 1) and January 16, 2015 (Trial Day 11), other than those conferences previously requested by ASI in its Notice of Appeal;
- The testimony of the following witnesses, not previously requested by ASI in its Notice of Appeal:
  - January 9, 2015 testimony of Rick White;
  - January 13, 2015 testimony of David Roberts;
  - January 13, 2015 testimony of Gyle Yearsley;

- January 13, 2015 testimony of William Tiffany;
- January 14, 2015 testimony of Dale Wilson;
- January 14, 2015 testimony of Doug Hackler;
- January 14, 2015 testimony of William Tiffany; and
- January 14, 2015 testimony of Lorelli Hackler.
- The following opening statements:
  - January 5, 2015 opening statement of plaintiff;
  - January 6, 2015 opening statement of Sage Silicon Solutions, LLC, David Roberts, Gyle Yearsley, and William Tiffany (collectively known as the “Sage Defendants”); and
  - January 6, 2015 opening statement of Zilog.

2. Clerk’s or Agency’s Record: Zilog hereby requests inclusion of the following pleadings in the clerk’s record on appeal, in addition to the standard record under IAR 28 and the filings identified by ASI in its Notice of Appeal:

DATE	DESCRIPTION	PARTY
12/02/11	Summons Evelyn Perryman	ASI
12/02/11	Summons Russell Lloyd	ASI
07/11/12	Notice of Substitution of Counsel [John Zarian]	ASI
08/05/13	Notice of Appearance	Zilog
01/23/14	Order Re: Plaintiff’s Discovery Motions	Court
02/27/14	Notice of Service of Subpoena to Cadence Design Systems, Inc.	ASI
03/21/14	Notice of Service of Subpoena Duces Tecum to Synopsys, Inc.	ASI
04/18/14	Declaration of Dan Eaton in Support of Zilog’s Motion for Protective Order	Zilog

<b>DATE</b>	<b>DESCRIPTION</b>	<b>PARTY</b>
06/16/14	Notice of Service of ASI's Second Supplemental Response to Zikolog's Interrogatories (Nos. 1-3)	ASI
07/09/14	Zilog's Notice of Errata Regarding its Memorandum in Support of Zilog's Motion for Sanctions	Zilog
07/14/14	Zilog's Memorandum in Opposition to Plaintiff's Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages	Zilog
07/14/14	Declaration of Rick White in Support of Zilog's Memorandum in Opposition to Plaintiff's Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages	Zilog
07/14/14	Declaration of Gerald T. Husch in Opposition to Plaintiff's Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages	Zilog
07/14/14	Declaration of David R. Staab in Opposition to Plaintiff's Motion to Amend Second Amended Complaint to Add Prayer for Punitive Damages	Zilog
07/14/14	Affidavit of Gary Cooper	Sage
08/28/14	Notice of Opposition to Proposed Order on Voluntary Dismissal	Sage
08/29/14	Affidavit of Sarah H. Arnett in Support of ASI's Motions for Summary Judgment	ASI
09/12/14	Zilog's Renewed Motion For Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1)	Zilog
09/12/14	Declaration of Dan Eaton in Support of Zilog's Renewed Motion For Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1)	Zilog
09/12/14	Declaration of Monte Dalrymple in Support of Zilog's Renewed Motion For Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1)	Zilog
09/12/14	Declaration of David Staab in Support of Zilog's Renewed Motion For Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1)	Zilog
09/12/14	Declaration of Gerald T. Husch in Support of Zilog's Renewed Motion For Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1)	Zilog

DATE	DESCRIPTION	PARTY
09/12/14	Memorandum in Support of Zilog's Renewed Motion For Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1)	Zilog
09/19/14	American Semiconductor, Inc.'s Motion to Continue the Hearing on Zilog's Renewed Motion for Sanctions	ASI
09/19/14	Third Affidavit of Sarah H. Arnett in Further Support of ASIs Motions for Summary Judgment	ASI
09/22/14	Joinder with Zilog's Renewed Motion for Sanctions	Sage
09/23/14	Zilog's Opposition to ASIs Motion to Continue the Hearing on Zilog's Renewed Motion for Sanctions Pursuant to IRCP 37 and Motion for Sanctions Pursuant to IRCP 11(a)(1)	Zilog
09/24/14	Declaration of Kennedy Luvai in Support of ASIs Motion for Continuance of Zilog's Motion for Sanctions	ASI
09/24/14	ASIs Reply in Support of its Motion to Continue the Hearing on Zilog's Renewed Motion for Sanctions	ASI
09/25/14	Fourth Affidavit of Sarah Arnett Providing Supplemental Authority in Further Support of Opposition to Zilog's Motion for Summary Judgment	ASI
09/25/14	Zilog's Objection and Motion to Strike Fourth Affidavit of Sarah H. Arnett	Zilog
09/25/14	Memorandum in Support of Zilog's Objection and Motion to Strike Fourth Affidavit of Sarah H. Arnett	Zilog
10/03/14	Notice of Service of Zilog's Ninth Set of Discovery Requests to Plaintiff	Zilog
10/31/14	Zilog's Motion for Reconsideration	Zilog
10/31/14	Memorandum in Support of Zilog's Motion for Reconsideration	Zilog
10/31/14	Zilog's Motion in Limine Re: Testimony of Richard S. Hoffman	Zilog
10/31/14	Memorandum in Support of Zilog's Motion in Limine Re: Testimony of Richard S. Hoffman	Zilog
10/31/14	Plaintiff's Motion in Limine No. 8 Re: Voluntarily Dismissed Claims	ASI
10/31/14	Memorandum in Support of Plaintiff's Motion in Limine No. 8 Re: Voluntary Dismissed Claims	ASI

DATE	DESCRIPTION	PARTY
11/07/14	Sage Defendants' Opposition to ASI's Motion in Limine No. 8 Re: Voluntarily Dismissed Claims	Sage
11/07/14	Zilog's Joinder in Sage Defendants' Opposition to ASI's Motion in Limine No. 8 Re: Voluntarily Dismissed Claims	Zilog
11/07/14	ASI's Opposition to Zilog's Motion for Reconsideration	ASI
11/12/14	Affidavit of John D. Oborn in Support of the Sage Defendants' Motions in Limine	Sage
11/12/14	Reply in Further Support of Plaintiff's Motion in Limine No. 8 Re: Voluntarily Dismissed Claims	ASI
11/12/14	Reply in Support of Zilog's Motion in Limine Re: Testimony of Richard S. Hoffman	Zilog
11/12/14	Reply Memorandum in Support of Zilog's Motion for Reconsideration	Zilog
11/12/14	Reply in Support of Zilog's Motions in Limine Re: (1) Misappropriation of ASI's Confidential Information and (2) ASI's Alleged Prospective Economic Expectancy with Zilog	Zilog
11/25/14	Second Supplemental Declaration of Kennedy K. Luvai in Support of Plaintiff's Motions in Limine	ASI
12/04/14	Sage Joinder with Zilog's Opposition to ASI's Motion in Limine No. 13	Sage
12/22/14	Zilog's Requested Jury Instructions	Zilog
12/24/14	ASI's Requested Jury Instructions	ASI
12/30/14	ASI's Supplement to Requested Jury Instructions	ASI
01/02/15	Zilog's Objections and Counter-Designations to ASI's List of Deposition Designations for Use at Trial	Zilog
01/02/15	Notice of Joinder with Zilog's Objections and Counter-Designations to Plaintiff ASI's List of Deposition Designations for Use at Trial	Sage
01/05/15	Zilog's Notice of Errata Regarding its Objections to ASI's List of Deposition Designations for Use at Trial	Zilog
01/14/15	Second Supplement to ASI's Requested Jury Instructions	ASI
02/04/15	Affidavit of Brian Julian in Support of ASI's Motion for Attorney Fees and Costs	ASI

DATE	DESCRIPTION	PARTY
02/04/15	Zilog's Motion for Attorney Fees and Costs	Zilog
02/04/15	Declaration of Cheryl L. Dunham	Zilog
02/13/15	Affidavit of Donald J. Farley	Sage
02/13/15	Sage Defendants Memorandum in Opposition to ASI's Motion to Amend or Clarify the Verdict, or in the Alternative, Amend the Judgment	Sage
02/17/2015	Declaration of Gerald T. Husch in Opposition to ASI's Motion to Continue Hearing	Zilog
02/17/2015	Zilog, Inc.'s Memorandum in Opposition to ASI's Motion to Continue Hearing; Joinder In Sage Defendants' Memorandum in Opposition to ASI's Motion to Continue Hearing	Zilog
02/18/15	Affidavit of John D. Oborn Re: Additional Costs and Fees	Sage
02/19/15	Supplemental Declaration of Gerald T. Husch in Support of Motion for Attorney Fees and Costs	Zilog
02/19/15	ASI's Objection to Defendants Sage, Roberts, Yearsley and Tiffany's Joinder in Zilog's Motion for Attorney Fees and Costs	ASI
02/20/15	Notice of Errata Regarding Zilog's Memorandum of Fees and Costs	Zilog
02/20/15	Zilog's Post-Hearing Memorandum Regarding Pending Motions	Zilog
02/20/15	Declaration of David R. Staab in Support of Zilog's Post-Hearing Memorandum Regarding Pending Motions	Zilog
02/20/15	Declaration of Gerald T. Husch in Support of Zilog's Post-Hearing Memorandum Regarding Pending Motions	Zilog
02/20/15	Declaration of Monte J. Dalrymple in Support of Zilog's Post-Hearing Memorandum Regarding Pending Motions	Zilog
02/23/15	Memorandum Decision and Order Re: Attorney Fees and Costs	Court

3. Exhibits: In addition to the exhibits requested by ASI in their Notice of Appeal, Zilog hereby requests that the following documents, charts, or pictures offered or admitted as exhibits at trial, be included in the clerk's record on appeal:



EX NO.	NATURE OR DESCRIPTION OF PROCEEDING	ADMITTED
42	Depo Ex. 101, Zilog's 11/28/2010 PowerPoint Presentation Re: F6480 Silicon POP Level 1, Bates Nos. Z011589-609	01/09/15
118	Miscellaneous Sage Silicon Solutions Invoices to Zilog, Bates Nos. Z000007-022 plus Z000008	01/09/15
1-TT	Purchase Order to ASI, 2/21/03, Bates No. ASI 2549	01/07/15
1-NNNN	Purchase Order Nos. 406813 and 407054 issued by Zilog to Sage Silicon Solutions, LLC, totaling \$176,200.00	01/10/15
1-XXXX	Handwritten Invoice Summary in the amount of \$76,990.75	01/13/15
2-G	E-Mail Chain, 10/21/09 to 10/22/09, Re: Design Work, Bates Nos. SAGE003677-678	01/10/15
2-FF	Zilog Independent Contractor Services Agreement, Z000031-52	01/13/15
2-NN	Trial Ex. 101 (Document Entitled, "Est of Zilog Quote Prepared by ASI for Req for Prod No. 12"), with L. Hackler markups.	01/07/15

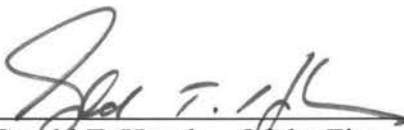
4. I certify that a copy of this request for additional transcript has been served on the court reporter named below at the address also set forth below, and that the estimated number of additional pages being requested is 480.

Susan Wolf  
Official Court Reporter, Ada County Courthouse  
200 West Front Street  
Boise, Idaho 83702

I further certify that this request for additional transcript and record has been served upon all parties required to be served pursuant to Rule 20.

DATED this 13th day of March, 2015.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Gerald T. Husch – Of the Firm  
Attorneys for Defendant Zilog, Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of March, 2015, I caused a true and correct copy of the foregoing **ZILOG, INC.'S REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD ON APPEAL** to be served by the method indicated below, and addressed to the following:

Gary L. Cooper  
COOPER & LARSEN, CHARTERED  
151 N. Third Ave., Suite 210  
P.O. Box 4229  
Pocatello, ID 83205-4229  
Facsimile (208) 235-1182  
*Attorney for Defendants/Respondents Sage  
Silicon Solutions, LLC; David Roberts; Gyle  
Yearsley; and William Tiffany*

☒ (x) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

Daniel W. Bower  
Chad E. Bernards  
STEWART TAYLOR & MORRIS PLLC  
12550 W. Explorer Dr., Suite 100  
Boise, ID 83713  
Facsimile (208) 345-4461  
*Attorneys for Counterclaimants/Respondents  
Sage Silicon Solutions, LLC; David Roberts;  
Gyle Yearsley; and William Tiffany*

☒ (x) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

John N. Zarian  
Kennedy K. Luvai  
PARSONS BEHLE & LATIMER  
800 W. Main St., Suite 1300  
Boise, ID 83702  
Facsimile (208) 562-4901  
*Attorneys for Plaintiff/Appellant and  
Counterdefendant American Semiconductor,  
Inc.*

☒ (x) U.S. Mail, Postage Prepaid  
☐ ( ) Hand Delivered  
☐ ( ) Overnight Mail  
☐ ( ) Facsimile

  
Gerald T. Husch



NO. \_\_\_\_\_  
A.M. 9:20 FILED P.M. \_\_\_\_\_

**JUN 29 2015**

**CHRISTOPHER D. RICH, Clerk**  
By **KELLE WEGENER**  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR,  
INC., an Idaho corporation,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC,  
an Idaho corporation, et al,

Defendants.

Case No. CV-OC-2011-23344

**ORDER TO ALLOW SUBSTITUTION  
OF COPY FOR ORIGINAL**

The Court has been advised by the office of the Ada County Clerk that the original of the Reply in further Support of Plaintiff American Semiconductor, Inc.'s Renewed Motion to Compel Against Defendant Zilog, Inc. filed January 7, 2014, is missing from the official file. The Clerk is authorized to substitute a true and correct copy of the pleading in the file in lieu of the original which a diligent search of the record has failed to locate.

**IT IS SO ORDERED.**

**DATED** this 26<sup>th</sup> day of June, 2014.

  
**JONATHAN MEDEMA**  
District Judge

*YW*

TO: CLERK OF THE COURT  
IDAHO SUPREME COURT  
451 WEST STATE STREET  
BOISE, IDAHO 83702

NO. \_\_\_\_\_  
A.M. 9:09 FILED P.M. \_\_\_\_\_

NOV 12 2015  
CHRISTOPHER D. RICH, Clerk  
By KELLE WEGENER  
DEPUTY

AMERICAN SEMICONDUCTOR, )  
Plaintiff-Appellant, ) Supreme Court No. 43011  
vs. ) Case No. CVOC-11-23344  
SAGE SILICON, )  
Defendants-Respondents. )

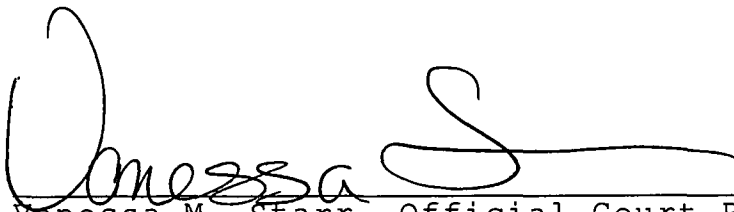
**NOTICE OF TRANSCRIPT LODGED**

Notice is hereby given that on May 8, 2015, I lodged a transcript 242 pages of length for the above-referenced appeal with the District Court Clerk of the **County of Ada** in the Fourth Judicial District.

**HEARING DATES INCLUDED:**

Motion, July 18, 2014

Motion, September 26, 2014

  
Vanessa M. Starr, Official Court Reporter

May 8, 2015  
Date

IN THE SUPREME COURT OF THE STATE OF IDAHO

Supreme Court No. 43011

AMERICAN SEMICONDUCTOR, INC.,  
an Idaho Corporation,

Plaintiffs,

v.

SAGE SILICON SOLUTIONS LLC, AN  
IDAHO CORPORATION; ZILOG, INC.,  
A DELAWARE CORPORATION; DAVID  
ROBERTS, GYLE YEARSLEY, WILLIAM  
TIFFANY, AND DEFENDANTS DOES I - X,

Defendants.

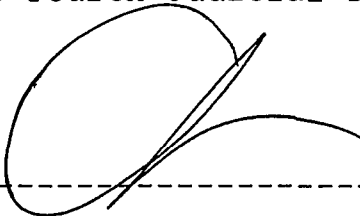
AND RELATED COUNTER ACTIONS.

NO. \_\_\_\_\_  
A.M. 9:09 FILED P.M. \_\_\_\_\_

NOV 12 2015  
CHRISTOPHER D. RICH, Clerk  
By KELLE WEGENER  
DEPUTY

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on June 11, 2015, I  
lodged a transcript, 86 pages in length, for the  
above-referenced appeal with the District Court Clerk of  
Ada County in the Fourth Judicial District.



(Signature of Reporter)  
Christie Valcich, CSR-RPR  
June 11, 2015

Dates: September 26, 2014 (PM Session)

002172

TO: CLERK OF THE COURT, IDAHO SUPREME COURT  
451 WEST STATE STREET, BOISE, IDAHO  
FAX (208) 334-2616

NOV 12 2015

CHRISTOPHER D. RICH, Clerk  
By KELLE WEGENER  
DEPUTY

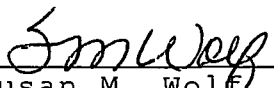
AMERICAN SEMICONDUCTOR, INC ) Docket No. 43011-201  
Plaintiff-Respondent, )  
vs. ) Case No. CVOC-2011-0023344  
SAGE SILICON SOLUTIONS ) NOTICE OF LODGING  
Defendant-Appellant. )

NOTICE OF TRANSCRIPT(S) LODGED

Notice is hereby given that on November 10, 2015,  
I lodged twenty (20) transcripts, totaling 3038 pages,  
for the following dates/proceedings:

01-11-13 Motion Hearing; 09-06-13 Motion  
Hearing; 01-10-14 Motion Hearing; 05-02-14 Motion  
Hearing; 11-14-14 Motion Hearing; 12-09-14 Motion  
Hearing; 12-23-14 Pretrial Hearing; 01-05 to 01-16-15  
Jury Trial, 11 days; 01-30-15 Post-Verdict Conference;  
02-19-15 Motion Hearing

for the above-referenced appeal with the District Court  
Clerk for Ada County, in the Fourth Judicial District.

  
\_\_\_\_\_  
Susan M. Wolfe,  
RPR, CSR No. 728

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR INC.,  
an Idaho Corporation,

Plaintiff-Counterdefendant-Appellant,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY; WILLIAM TIFFANY, individuals,

Defendants-Counterclaimants-Respondents,

and

ZILOG, INC., a Delaware Corporation; and  
DOES I-X,

Defendants-Respondents.

Supreme Court Case No. 43011

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal. [please note: only specific exhibits were requested]

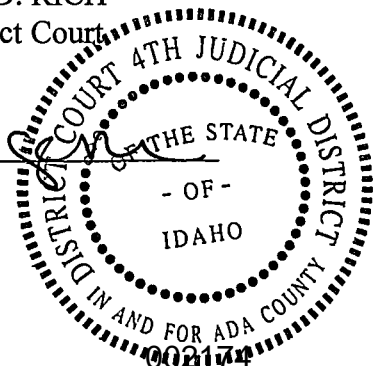
I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

1. Sixty (60) requested documents designated as "Filed Under Seal".

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 12th day of November, 2015.

CHRISTOPHER D. RICH  
Clerk of the District Court

By V. Wells  
Deputy Clerk



CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THOMAS F. NEVILLE/JANET ELLIS  
DISTRICT JUDGE DEPUTY CLERK

JANUARY 5 - 14, 2015

AMERICAN SEMICONDUCTOR, INC.,

Plaintiff,

vs.

SAGE SILICON SOLUTIONS, LLC,  
ZILOG, INC., DAVID ROBERTS,  
GYLE YEARSLEY AND WILLIAM  
TIFFANY,

Defendant.

Case No. CV-OC-2011-23344

**EXHIBIT LIST  
JURY TRIAL**

APPEARANCES:

JOHN ZARIAN & KENNEDY LUVAI  
PARSONS BEHLE & LATIMER

COUNSEL FOR PLAINTIFF

GARY L. COOPER/JD OBORN  
COOPER & LARSEN

COUNSEL FOR SAGE SILICON

CHAD E. BERNARDS  
STEWART TAYLOR & MORRIS

COUNSEL FOR COUNTERCLAIMANTS  
SAGE SILICON, ROBERTS, YEARSLEY  
& TIFFANY

GERALD T. HUSCH/ANDREA ROSHOLT  
STEVE THOMAS  
MOFFATT THOMAS BARRETT, ROCK & FIELDS

COUNSEL FOR ZILOG, INC.

# ASI TRIAL EXHIBITS

TRIAL EXH #	DEPO EXH #	DESCRIPTION	DATE OFF'D	ADMIT	DENY	OBJ
4.	12	Employee Confidentiality Agreement Re: David A. Roberts; Bates Nos. ASI 33 to 36		1/6/15		
6.	17	E-Mail Chain, 12/7/09, RE: Read Zilog Was Sold, Bates Nos. SAGE 003679 to 680		1/10/15		
7.	18	American Semiconductor, Inc. Mutual Non-Disclosure Agreement Re: William Tiffany, No Bates Numbers		1/6/15		
8.	19	American Semiconductor, Inc. Mutual Non-Disclosure Agreement Re: Russell Lloyd, No Bates Numbers		1/6/15		
9.	20	American Semiconductor, Inc. Mutual Non-Disclosure Agreement Re: Evelyn Perryman, No Bates Numbers		1/9/15		
10	21	American Semiconductor, Inc. Mutual Non-Disclosure Agreement Re: Gyle Yearsley, No Bates Numbers		1/6/15		
13.	25	Employee Confidentiality Agreement Re: Gyle Yearsley, No Bates Numbers		1/6/15		

TRIAL EXH #	DEPO EXH #	DESCRIPTION	DATE OFF'D	ADMIT	DENY	OBJ
14.	26	Employee Confidentiality Agreement Re: William Tiffany, Bates Nos. ASI 56 to 59		1/6/15		
15.	27	Employee Confidentiality Agreement Re: Russell Lloyd, No Bates Numbers		1/6/15		
16.	28	E-Mail From David Roberts to Gyle Yearsley and Others, 12/9/09, Re: Employee Confidentiality Agreement, Bates No. SAGE 004396		1/9/15		
17.	31	E-Mail From David Roberts to Gyle Yearsley, 12/19/09, Re: IXYS and ASI Work, Bates No. SAGE 004398		1/10/15		
20.	34	Employee Confidentiality Agreement Re: Evelyn Perryman, No Bates Numbers		1/6/15		
21.	35	E-Mail Chain, 1/21/10 to 2/3/10, Re: Glad To See You Landed Again, Bates Nos. SAGE 004399 to 401		1/10/15		
22.	36	State of Idaho Certificate of Organization Re: Sage Silicon Solutions, LLC, Bates No. SAGE 3225		1/9/15		
23.	40	American Semiconductor, Inc., Employee Manual, Bates Nos. ASI 1 to 26		1/6/15		



TRIAL EXH #	DEPO EXH #	DESCRIPTION	DATE OFF'D	ADMIT	DENY	OBJ
29.	52	E-Mail From David Roberts to Gyle Yearsley and Others, 3/14/11, Re: Conference Call With Zilog Tomorrow, Bates No. SAGE SUPPLEMENT 714		1/10/15		
31.	57	E-Mail From David Roberts, 1/21/11, Re: Sage Silicon Solutions Meeting, With Attachment, Bates Nos. SAGE 2435 to 2437		1/10/15		
34.	63	Zilog Independent Contractor Services Agreement, Bates Nos. Z000031 to 036 and 038 to 052	1/10/15			Not redact
36.	67	E-Mail Chain, 7/24/11, Re: Sage Silicon Contract, Bates No. Z002901		1/10/15		
39.	91	E-Mail Chain, 4/20/11, Re: Bandwidth, Bates No. Z000493		1/10/15		
41.	101	Zilog Business Case Executive Summary, Bates Nos. Z011578 to 588		1/9/15		
42.	102	Zilog PowerPoint Presentation Re: F6480 Silicon POP Level 1, Bates Nos. Z011589 to 609		1/9/15		
43.	103	F6482 Launch Schedule Deliverables List, Bates Nos. Z011610 to 613		1/9/15		
45.	111	E-Mail Chain, 6/8/10, Re: Lunch With Jhay on Monday, Bates No. Z010059		1/8/15		

TRIAL EXH #	DEPO EXH. #	DESCRIPTION	DATE OFF'D	ADMIT	DENY	OBJ
46.	112	E-Mail Chain, 6/8/10 to 6/9/10, Re: Lunch With Jhay Toribio on Monday, Bates Nos. Z010737 to 010738		1/8/15		
47.	113	E-Mail Chain, 6/11/10, Re: Lunch With Jhay Toribio on Monday, Bates No. Z010739		1/8/15		
50.	117	E-Mail Chain, 5/12/11, Re: F6482 01 Introduction Review Action Item, Bates No. Z000722		1/10/15		
54.	127	E-Mail Chain, 11/1/10 to 1/14/11, Re: Hi, Dave, Bates Nos. Z000413 to 415		1/10/15		
56.	135	E-Mail From Sean Beck to Russ Lloyd, 11/9/10, Re: 86E08 OTP Programming Fail, Bates No. Z010407		1/8/15		
57.	136	E-Mail From Sean Beck to Russ Lloyd, 1/25/11, Re: Data Programming Fail, Bates No. Z010781		1/8/15		
61.	157	Document Re: Justification for Extension to Clare Services PO, 4/4/12, Bates No. Z033886		1/13/15		
62.	158	Z8F6480 Project Status, 4/2/12, Bates No. Z012651		1/13/15		
71.	224	Copy of Email to David Roberts from David Staab, Subject: Re: How's It Going, Dated 06/18/2009, Bates Z011556-11557		1/10/15		
75.	242	ASI Mutual Non-Disclosure Agreement with David Roberts, Bates Nos. ASI 38 to 39		1/6/15		

TRIAL EXH #	DEPO EXH #	DESCRIPTION	DATE OFF'D	ADMIT	DENY	OBJ
77.	248	Miscellaneous E-Mails, 6/18/09 to 6/19/09, Bates Nos. 66 to 67 and ASI 2281		1/6/15		
81.	282	Letter From Doug Hackler to David Roberts, 12/4/09, Re: Design Manager, Bates No. ASI 32		1/6/15		
82.	283	E-Mail From Dale Wilson to David Roberts, 12/9/09, Re: Employment Discussion Plan, Bates No. ASI 2033		1/8/15		
86.	292	E-Mail Chain, 12/9/09, Re: Employee Offers, Bates No. ASI 2021		1/7/15		
87.	293	Letter From Doug Hackler to Gyle Yearsley, 12/9/09, Re: Sr. Design Engineer, With Attachment, Bates Nos. ASI 125 to 126 (With Unnumbered Pages)		1/6/15 first page only		
88.	294	Letter From Doug Hackler to William Tiffany, 12/9/09, Re: Sr. Design Engineer, With Attachment, Bates Nos. ASI 55 to 59		1/6/15		
89.	298	ASI Employee Manual, 2010, Bates Nos. ASI 1824 to 1848		1/6/15		
90.	299	Letter From Doug Hackler to Gyle Yearsley, 1/18/10, Re: Sr. Design Engineer, Bates No. ASI 1927		1/6/15		
91.	300	Letter From Doug Hackler to William Tiffany, 1/18/10, Re: Sr. Design Engineer, Bates No. ASI 60		1/6/15		
92.	301	Letter From Doug Hackler to David Roberts, 1/18/10, Re: Design Manager, Bates No. ASI 37		1/6/15		

TRIAL EXH. #	DEPO EXH. #	DESCRIPTION	DATE OFF'D	ADMIT	DENY	OBJ
94.	304	E-Mail Chain, 2/23/10 to 2/24/10, Re: Zilog Sec Filings Alert, Bates No. ASI 1965		1/6/15		
95.	310	E-Mail Chain, 9/23/11, Re: Personnel Interview Notes, Bates Nos. ASI 1989 to 1991	1/8/15		Not Admitted	Zilog & Sage
97.	320	Memo From Dale Wilson to Gyle Yearsley, 9/27/11, Re: Termination of Employment, With Attached Letter Re: Final Paycheck, Bates Nos. ASI 1930 and 1932		1/6/15		
98.	321	Memo From Dale Wilson to David Roberts, 9/27/11, Re: Termination of Employment, With Attached Letter Re: Final Paycheck, Bates Nos. ASI 1903 and 1904		1/6/15		
99.	322	Memo From Dale Wilson to William Tiffany, 9/27/11, Re: Termination of Employment, With Attached Letter Re: Final Paycheck, Bates Nos. ASI 1953 and 1954		1/6/15		
101.	325	Document Entitled, "Est of Zilog Quote Prepared by ASI for Req for Prod No. 12," No Bates Number		1/7/15		
102.	338	American Semiconductor, Inc., Income Statement for 2009 through 2012, Bates Nos. ASI 003532		1/7/15		
103.	340	Zilog IXYS Operations - Rick White Document Z010766		1/9/15		
104.	343	Email Chain - Subject: Hiring Freeze Z005237		1/9/15		

TRIAL EXH #	DEPO EXH #	DESCRIPTION	DATE OFF'D	ADMIT	DENY	OBJ
105.	382	Mozilla Firefox Screenshots, Bates Nos. ASI 002548.a, 2548.b, and 2548.c		1/8/15		
106.	385	ASI Hours Analysis, Bates Nos. ASI 003533 to 3544		1/7/15 pgs 3535-3544		Sage
107.	386	2011 ASI Income Statement, Bates Nos. ASI 003546 to 3547		1/7/15		
108.	387	2010 ASI Income Statement, Bates Nos. ASI 003548 to 3549		1/7/15		
109.	388	PHONO-D Job Cost Report, 10/23/11, Bates No. ASI 003552		1/7/15		zilog
110.	389	Tools Analysis, Bates No. ASI 003553		1/8/15		
117	104	Access List, Bates No. Z011614		1/9/15		
118.	43	Miscellaneous Sage Silicon Solutions Invoices to Zilog, Bates Nos. Z000007 to 22		1/9/15		
119.	384	Schedule 1 from Richard Hoffman report		Illustrative 1/12/15		Sage & Zilog
120.	384	Schedule 2 from Richard Hoffman Report		Illustrative 1/12/15		Sage
121.	384	Schedule 3 from Richard Hoffman Report		Illustrative 1/12/15		Sage
122.	384	Schedule 4 from Richard Hoffman Report		Illustrative 1/12/15		Sage
123.	384	Schedule 5 from Richard Hoffman Report		Illustrative 1/12/15		Sage
127		Schedule 2 from Richard Hoffman Rebuttal Report		Page 1 illustrative 1/12/15		Sage
193	119	E-Mail From David Roberts to Dan Eaton, 1/25/12, Re:		1/10/15		
198	250	David Roberts' 7/10/09 Consultant Agreement with American		1/6/15		

TRIAL EXH #	DEPO EXH #	DESCRIPTION	DATE OFF'D	ADMIT	DENY	OBJ
		Semiconductor, Inc. re: Hirelco				
199		E-mail from Dale Wilson to Doug Hackler, Lorelli Hackler, and Rich Chaney regarding termination discussions	1/8/15		Not Admitted	Sage & Zilog
204	61	E-Mail Chain, 1/17/11 to 2/15/11, Re: NDA Info, Bates Nos. Z002385 to 2392 (redacted)		1/13/15		

**DEFENDANT SAGE SILICON AND DEFENDANTS  
ROBERTS  
TIFFANY & YEARSLEY EXHIBIT LIST**

TRIAL EXHIBIT #	DEPO EXHIBIT #	DESCRIPTION	DATE	ID	OFFD	OBJ	ADN
1-A	11	ROBERTS / STAAB EMAILS 6-22-2009, EXHIBIT 11 TO ROBERTS DEPO 2-11-2014					1/10/1
1-D	15	EMAILS 08/09 RE: SAGE NAME FOR LLC, EXHIBIT 15 TO ROBERTS DEPO 2-11-2014					1/10/1
1-N	30	SAGES PROPOSAL TO ASI RE: IP, EXHIBIT 30 TO ROBERTS DEPO 2-11-2014				PL object for foundatio n	1/10/1
1-S	69	DAVID ROBERTS ASI W-2 2009, EXHIBIT 69 TO ROBERTS DEPO 2-11-2014					1-7-15
1-Z	41 2ND	SAGE STATEMENT FOR ZILOG WORK, 2ND PAGE OF EXHIBIT 41 TO ROBERTS DEPO 2-11-2014					1/13/1

		ROBERTS EMAIL THAT LATE AFTERNOON IS BEST 3/7/11, EXHIBIT 115 TO STAAB					
1-FF	115	DEPO 3-4-2013					1/10/1
1-GG	116	ROBERTS EMAIL SCHEDULING PHONE MEETINGS FOR FRIDAY AFTERNOON 8/24/11, EXHIBIT 116 TO STAAB DEPO 3-4-2013					1/10/1
1-HH	123	EMAILS ABOUT SETTING UP VPN (MARCH 2011), EXHIBIT 123 TO STAAB DEPO 3-4-2013					1/10/1
1-II	124	EMAILS ABOUT SETTING UP VPN (FEBRUARY 2011), EXHIBIT 124 TO STAAB DEPO 3-4-2013					1/10/1
1-JJ	125	SAGE DEFENDANTS EMAILS ABOUT SETTING UP WEEKLY MEETINGS LATE AFTERNOON (4:30 PM) 3/11, EXHIBIT 125 TO STAAB DEPO 3-4-2013					1/10/1
1-MM	139	GYLE SCHEDULING CALL TIME 4/11, EXHIBIT 139 TO STAAB DEPO 3-4-2013					1/10/1
1-OO	152	EMAILS WITH STAAB ABOUT WORKING FROM HOME, EXHIBIT 152 TO LLOYD DEPO 5-5-2014					1/10/1
1-PP	227	EVOLUTION OF THE SAIC PROJECT AND INVOLVEMENT OF SAGE DEFENDANTS 11/11/2009, EXHIBIT 227 TO TIFFANY DEPO 6-20-2014	PL OFFER 1/7/15			OBJECT BY DEF SAGE	
1-TT	233	2003 ASI ZILOG WORK, EXHIBIT 233 TO CHANEY DEPO 6-25-2014					1-7-15
1-UU	234	TEMPORARY EMPLOYMENT TO PERFORM EX 233 WORK, EXHIBIT 234 TO CHANEY DEPO 6-25-2014					1-7-15
1-VV	241	ROBERTS HACKLER EMAILS ABOUT TEAM 3/09, EXHIBIT 241 TO CHANEY DEPO 6-25-2014					1-7-15
1-WW	245	ROBERTS EMAIL WILSON HACKLER ABOUT TEAM 05/09, EXHIBIT 245 TO CHANEY DEPO 6-25-2014					1-8-15
1-BBB	263	STATE OF IDAHO SUBMISSION THAT ASI WAS A PURE PLAY FOUNDRY, EXHIBIT 263 OF CHANEY DEPO 6-25 & 26-2014					1/8/15 w/out p 2588

		EMAIL WITH WILSON ABOUT PUTTING CIRCUITS ON TEST CHIP 9/09, EXHIBIT 266 OF CHANEY DEPO 6-25 & 26-2014							
1-CCC	266								1/8/15
1-EEE	271	ROBERTS HACKLER WILSON AND CHANEY EMAIL ABOUT COST OF TOOLS 11/09, EXHIBIT 271 OF CHANEY DEPO 6-25 & 26- 2014							1/8/15
1-FFF	278	WILSON TO ROBERTS ABOUT SBIR AWARD 11/30/09, EXHIBIT 278 OF CHANEY DEPO 6-25 & 26-2014							1/6/15
1-MMM	289	WILSON ROBERTS EMAILS ABOUT CORPORATE ENTITY, SECONDARY EMPLOYMENT ETC, EXHIBIT 289 TO WILSON DEPO 6-25 & 26-2014							1/8/15
1-OOO	291	L HACKLER SHOULD WE INCLUDE SOME LANGUAGE, EXHIBIT 291 TO L HACKLER DEPO 6-25 & 26-2014							1/7/15
1-RRR	295	MEETING WITH HACKLER, YEARSLEY AND ROBERTS 12/11/09, PREMARKED BUT NOT USED EXHIBIT 295 OF WILSON DEPO 6-25 & 26-2014							1/10/1
1-WWW	306	EMAIL RE: TEST CHIP WITH U of I, PREMARKED BUT NOT USED EXHIBIT 306 OF WILSON/CHANEY DEPO 6-25							1/13/1
1-AAAA	323A	PERRYMAN SETTLEMENT OFFER, EXHIBIT 323 TO WILSON DEPO 6-25 & 26-2014							1/7/15
1-NNNN		PURCHASE ORDERS, EXHIBIT D TO ROBERTS AFFIDAVIT 9-12-2014							1/10/1
1-OOOO		SCHEDULE 1-SUMMARY, EXHIBIT TO REINSTEIN SUPPLEMENTAL REPORT, 11- 24, 2014							1/10/1. illustrat
1-VVVV		COMBINED, EXHIBIT TO REINSTEIN SUPPLEMENTAL REPORT, 11-24-2014							1/10/1. illustrat
1-XXXX		Gyle Yearsley illustrative Chart							1/13/1. illustrat



## DEFENDANT ZILOG EXHIBIT LIST

NO.	DESCRIPTION	DATE	ID	STIP	OFFD	OBJ	ADMIT
2-A	E-Mail Chain, 5/7/09, From D. Roberts to D. Staab, Re: Zilog Equipment in Meridian, With Attached Post-It Note, Bates No. SAGE003673 and [SAGE] 254	5/7/2009	Deposition Ex 6				1/13/15 as redacted
2-G	E-Mail Chain, 10/21/09 to 10/22/09, between D. Staab and D. Roberts, Re: Design Work, Bates Nos. SAGE003677-678	10/22/2009	Deposition Ex 16				1/10/15
2-L	E-Mail Chain, 1/17/11 to 2/7/11, between D. Roberts and D. Staab, Re: NDA Info, Bates Nos. Z001172-177	2/7/2011	Deposition Ex 59				1/10/15 As redacted
2-U	Email from D. Wilson to G. Yearsley, W. Tiffany, and R. Lloyd, cc'd D. Roberts, Bates [SAGE] 282	11/13/2009	From Deposition Ex 274				1/8/15
2-V	E-Mail Chain, 11/24/09, between D. Roberts and R. Chaney, Re: Proposal and Web Stuff, Bates No. ASI 2189	12/24/2009	Deposition Ex 277				1/7/15
2-FF	Zilog Independent Contractor Services Agreement, Bates Nos. Z000031-Z000052	2/15/2011	Z000031- Z000052				1/13/15
2-HH	E-Mail Chain, 3/16/09 to 3/19/09, between D. Staab and D. Roberts, Re: thanks for monitor, Bates Nos. Z011575	3/19/2009	Z011575				1/13/15
2-JJ	Doug Hackler Travel Records, Bates Nos. ASI003556-ASI003582	Various	ASI003556 - ASI003582				1/7/15
2-NN	Illustrative exhibit 101 used with Lorelei Hackler						1/14/15 Illustrative

## DEPOSITIONS PUBLISHED

DOUGLAS HACKLER 10/15/14  
DOUGLAS HACKLER 06/27/14  
ALAN SHAW 03/12/14  
RUSSELL LLOYD 05/05/14  
EVELYN PERRYMAN 05/05/14  
DAVID ROBERTS 02/11/14  
WILLIAM TIFFANY 06/20/14  
GYLE YEARSLEY 02/11/14  
DENNIS REINSTEIN 12/09/14 & 11/05/14  
DAVD STAAB 02/12/14 & 03/04/14

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR INC.,  
an Idaho Corporation,

Plaintiff-Counterdefendant-Appellant,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY; WILLIAM TIFFANY, individuals,

Defendants-Counterclaimants-Respondents,

and

ZILOG, INC., a Delaware Corporation; and  
DOES I-X,

Defendants-Respondents.

Supreme Court Case No. 43011

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have  
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of  
the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

JOHN N. ZARIAN  
ATTORNEY FOR APPELLANT  
BOISE, IDAHO

GARY L. COOPER  
ATTORNEY FOR RESPONDENT  
POCATELLO, IDAHO

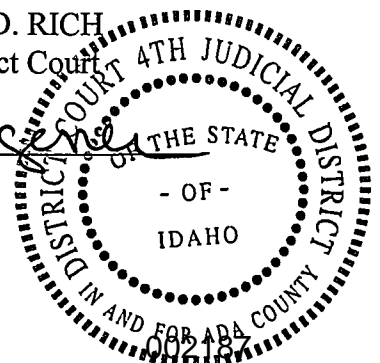
CHAD E. BERNARDS  
ATTORNEY FOR RESPONDENT  
BOISE, IDAHO

STEPHEN R. THOMAS  
ATTORNEY FOR RESPONDENT  
BOISE, IDAHO

Date of Service: NOV 12 2015

CHRISTOPHER D. RICH  
Clerk of the District Court

By K. Wesen  
Deputy Clerk



CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

AMERICAN SEMICONDUCTOR INC.,  
an Idaho Corporation,

Plaintiff-Counterdefendant-Appellant,

vs.

SAGE SILICON SOLUTIONS, LLC, an Idaho  
Corporation; DAVID ROBERTS; GYLE  
YEARSLEY; WILLIAM TIFFANY, individuals,

Defendants-Counterclaimants-Respondents,

and

ZILOG, INC., a Delaware Corporation; and  
DOES I-X,

Defendants-Respondents.

Supreme Court Case No. 43011

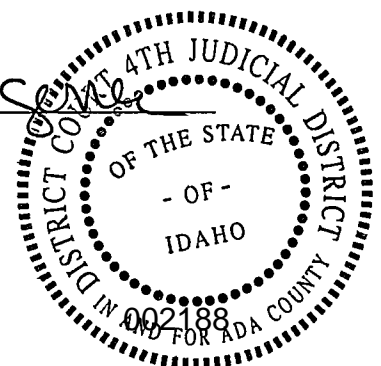
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 27th day of February 2015.

CHRISTOPHER D. RICH  
Clerk of the District Court

By KWesene  
Deputy Clerk



CERTIFICATE TO RECORD